



FEDERAL ACQUISITION CIRCULAR

August 12, 1987

Number 84-29

Federal Acquisition Circular (FAC) 84-29 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-29 is effective August 24, 1987.

COMPLETED

ORIGINAL

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ITEM I--PUBLIC ANNOUNCEMENT OF CONTRACT AWARDS

FAR 5.303 is revised to allow agencies to announce awards at a minimum dollar threshold other than \$3 million if they so desire. This was done to recognize the fact that the same threshold was not suitable for all agencies and to eliminate the need for FAR changes or deviations to accommodate the different needs of disparate agencies.

Replacement pages: 5-5 and 5-6.

ITEM II--ECONOMIC ORDER QUANTITIES

FAR Subpart 7.2 and FAR 52.207-4 which were incorporated in FAC 84-11 as interim rules (see Item II of FAC 84-11 published in the Federal Register on August 30, 1987 [50 FR 35474])) are hereby revised and incorporated as final rules to prescribe policies, procedures, and a contract provision for gathering and using information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased. FAR sections 14.212 and 15.415 are adopted as final rules without change. Under the final coverage, offerors are invited to state an opinion on whether the quantity of supplies proposed to be acquired is economically advantageous to the Government and, if applicable, to recommend a more advantageous quantity, including a quoted unit and total price. FAR 52.207-4 is modified to revise the definition of "economic purchase, quantity" in paragraph (b) of the solicitation provision. A revision to FAR 13.107(d) is added in the final rule to extend the requirements of the interim rule to small purchases. Also, FAR 7.203 is revised to (1) make mandatory, rather than optional, the requirement for civilian agencies to include the provision at FAR 52.207-4 in solicitations for supplies, and (2) provide a number of exemptions where the provision need not be included in solicitations. This FAR amendment implements section 1233 of Pub. L. 98-525 and section 205 of Pub. L. 98-577.

Replacement pages: 1-1, 1-2, 7-3, 7-4, 13-3, 13-4, 52-9, and 52-10.

ITEM III--SMALL BUSINESS SIZE STANDARDS

FAR 19.102 is revised in the table of industry size standards to reflect corrections made by the Small Business Administration in FR Doc. 87-12906 published in the Federal Register issue of June 8, 1987 (52 FR 21497).

Replacement pages: 19-3 and 19-4.

ITEM IV--REGULAR DEALER--SPECIALTY ADVERTISING PRODUCT DEALER

FAR 22.606-2(b) is revised to comply with the Department of Labor's amendment to the Walsh-Healy Public Contracts Act regulations to provide an alternative definition for a regular dealer in specialty advertising products.

Replacement pages: 22-7 and 22-8.

ITEM V--BID GUARANTEE, OPTIONAL OVERSEAS

FAR 28.101-1(c) is revised to permit a waiver for bid guarantees for construction work to be performed overseas.

Replacement pages: 28-1 and 28-2.

ITEM VI--CONTRACTS WITH INDIAN TRIBAL GOVERNMENTS

FAR 31.107 is revised to add an erroneously omitted reference to "federally recognized Indian tribal governments" in the applicability language for FAR Subpart 31.6--Contracts With State, Local, and Federally Recognized Indian Tribal Governments.

Replacement pages: Table of Contents for Part 31, 31-5, and 31-6.

ITEM VII--REDUCING CUSTOMARY PROGRESS PAYMENT RATES

FAR Part 32 revised to accomplish the following: (1) lower the customary progress payment rate for large businesses from 90% to 80% and for small businesses from 95% to 85%, (2) incorporate the progress payment limitations on undefinitized contract actions that had been established under the Defense Procurement Improvement Act of 1986, and (3) provide guidance for situations where more than one progress payment rate is being used.

Replacement pages: Table of Contents for Part 32, 32-1, 32-2, 32-11, 32-12, 32-13, 32-14, 32-17, 32-18, 32-19, 32-20, 52-109, and 52-110, 52-113, and 52-114, 52-119, 52-120, 52-121, 52-122, and 52-122.1.

ITEM VIII--USE OF GOVERNMENT PROPERTY

FAR 45.509-2(b) is revised by (a) establishing a specified dollar level, i.e., an acquisition cost of \$5,000 or more, as the threshold for application of the requirements in FAR 45.509-2(b)(1) through (b)(4), and (b) changing the term "package plants and standby lines" to "plants and equipment retained for mobilization."

Replacement pages: 45-19 and 45-20.

ITEM IX--INVENTORY SCHEDULES, PREPARING AND SUBMITTING STANDARD
FORM (SF) 1432

FAR 45.606-5(e)(4)(ii) is revised to clarify the descriptive information to be included on the SF 1432 when a contractor reports excess special tooling and special test equipment for disposal action. In order to permit the Government to determine the appropriate disposition and to maximize the reutilization potential, the function performed by, and the end-item application of, the special tooling or the special test equipment must be included on the inventory schedule. An editorial change to 45.606-5(e)(4)(i) is also made.

Replacement pages: 45-23 and 45-24.

ITEM X--FAR CHANGES CLAUSES

FAR clauses 52.243-1, 52.243-2, 52.243-3, and 52.243-4 are amended to reinstate the pre-FAR requirement that the contractor must "assert its right to an adjustment" rather than "submit its proposal for adjustment" within 30 days from the receipt of a written order. While this action corrects an unintended policy change which occurred during drafting of the FAR, contractors should not construe this action as a relaxation of the FAR 43.204 requirement for prompt definitization of unpriced change orders.

Replacement pages: 52-139, 52-140, 52-141, and 52-142.

ITEM XI--SETTLEMENT PROPOSAL (TOTAL COST BASIS), REVISION OF
STANDARD FORM (SF) 1436

FAR 53.249, Termination of contracts (SF's 1034 and 1435 through 1440), is amended in paragraph (a)(3) to allow for the correction of a typographical error on SF 1436. Pending the publication of a new edition of the form, currently dated October 1983, a pen and ink change to Item 7, Section II of the form is authorized and should read, "Total Costs (Items 1 thru 6)."

Replacement pages: 53-5 and 53-6.

ITEM XII--EDITORIAL CORRECTIONS

Replacement pages: Structure of the FAR to the Subpart Level (pages 1 and 2 to correct printing error in FAC 84-11; 5 and 6 to correct printing error in FAC 84-5); 13-3 and 13-4 (furnished under Item II) and to correct printing error in FAC 84-26, 31-33 and 31-34 to correct printing error in FAC 84-25; 52-87 and 52-88 to correct reference error in FAC 84-27.

FINAL RULES:

1. The interim rule (FAC 84-17) amending Part 25 and sections 52.225-8 and 52.225-9, which were published on May 6, 1986 (51 FR 16802), with a correction on June 10, 1986 (51 FR 20976), is hereby adopted.

2. The interim rule (FAC 84-22) amending Part 25, which was published in the Federal Register on August 27, 1986 (51 FR 30618), with a correction published on March 23, 1987 (52 FR 8567), is hereby adopted as a final rule.

FILING INSTRUCTIONS

REMOVE PAGES

Structure of the FAR
to the Subpart Level
(pages 1 and 2)
(pages 5 and 6)

1-1 and 1-2

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13-3 and 13-4

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INSERT PAGES

Structure of the FAR
to the Subpart Level
(pages 1 and 2)
(pages 5 and 6)

1-1 and 1-2

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7-3 and 7-4

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PART 1

FEDERAL ACQUISITION REGULATIONS SYSTEM

1.000 Scope of part.

This part sets forth basic policies and general information about the Federal Acquisition Regulations System including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation. Subparts 1.2, 1.3, and 1.4 prescribe administrative procedures for maintaining the FAR System.

SUBPART 1.1—PURPOSE, AUTHORITY, ISSUANCE

1.101 Purpose.

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).

1.102 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83, and OFPP Policy Letter 85-1, Federal Acquisition Regulations System, dated August 19, 1985.

(b) The FAR is prepared, issued, and maintained, and the FAR System is prescribed, jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities.

1.103 Applicability.

The FAR applies to all acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1.104 Issuance.

1.104-1 Publication and code arrangement.

(a) The FAR is published in (1) the daily issue of the Federal Register, (2) cumulated form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

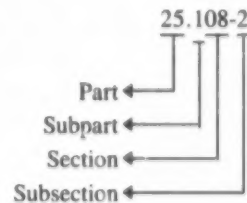
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see Subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (e.g., part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

1.104-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which deals with a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash, represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level shall consist of parenthetical alphanumeric reading from highest to lowest indenture as follows: lower case alphabet, Arabic numbers, lower case Roman numerals, and upper case alphabet. The following example is illustrative:

(a)(1)(i)(A)

Subdivisions, below the 4th level shall repeat the sequence.

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

1.104-3

FEDERAL ACQUISITION REGULATION (FAR)

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

(i) Part would be "FAR Part 9" outside the FAR and "Part 9" within the FAR.

(ii) Subpart would be "FAR Subpart 9.1" outside the FAR and Subpart 9.1" within the FAR.

(iii) Section would be "FAR 9.106" outside the FAR and "9.106" within the FAR.

(iv) Subsection would be "FAR 9.106-4" outside the FAR and "9.106-4" within the FAR.

(v) Paragraph would be "FAR 9.106-4(d)" outside the FAR and "9.106-4(d)" within the FAR.

(4) Citations of authority (e.g., statutes or executive orders) in the FAR shall follow the Federal Register form guides.

1.104-3 Copies.

Copies of the FAR in Federal Register, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

1.105 OMB Approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.4	9000-0003
4.102	9000-0033
4.7	9000-0034
5.405	9000-0036
7.2	9000-0082
8.203-2	9000-0017
9.1	9000-0011
9.2	9000-0020
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0002
14.205-4(c)	9000-0037
14.406	9000-0038
14.5	9000-0041
15.106	9000-0034
15.404	9000-0037
15.7	9000-0078
15.8	9000-0013
15.812-1(b)	9000-0080
19.7	9000-0006
22.103	9000-0065
22.606-2(b)	1215-0157
22.8	1215-0072
22.11	9000-0066

FAR segment

22.13
22.14
27.4
28.1
28.2
29.304
31
31.205-46
31.205-46(a)(3)
32.1
32.4
32.5
32.7
33
36.302
36.603

42.7
42.12
42.13
42.14
42.203

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52.203-2
52.203-4
52.208-1
52.208-2
52.209-1
52.210-5
52.210-6
52.212-1
52.212-2
52.214-2
52.214-5
52.214-8
52.214-14
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52.215-1
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PART 5-PUBLICIZING CONTRACT ACTIONS

5.207

(f) *Information not covered by Numbered Notes.* To alert prospective contractors to information not covered by Numbered Notes, contracting officers should identify the following unusual circumstances in the synopsis:

(1) *"Availability of specifications, plans, drawings, or other technical data.* It is impracticable to distribute the applicable
[insert 'specifications,' 'plans,' 'drawings,' or other appropriate words] with the solicitation. These contract documents may be examined or obtained at....."

(2) *"Availability of background research report.* This contract for basic research is a continuation of an effort conducted for the past
[insert period]. A research report containing findings to date is not available to the Government."

(3) *"Production requirements.* The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture."

(4) *Removed.*

(g) **CODES TO BE USED IN SYNOPSES TO IDENTIFY SERVICES OR SUPPLIES.**

(1) Contracting officers shall use the following classification codes to categorize services:

Code	Description
A	Experimental, developmental, test, and basic and applied research work.
H	Expert and consultant services.
J	Maintenance and repair of equipment.
K	Modification, alteration, and rebuilding of equipment.
L	Technical representative services (e.g., services of technical specialists required to assist with the installation, checking, operation, and maintenance of complex equipment).
M	Operation and maintenance of Government-owned facility.
N	Installation of equipment (use code K if the contract also involves modification, alteration, or rebuilding of the equipment).
O	Funeral and Chaplain services.
P	Salvage services (services required to salvage property of any kind).
Q	Medical services.
R	Architect-engineer services.
S	Housekeeping services; e.g.,— Utilities (gas, electric, telephone, etc.); Laundry and dry cleaning; Custodial-janitorial; Insect and rodent control; Packing and crating; Storage; Garbage and trash collection; Food; Fueling; Fire protection; Building and grounds maintenance; Care of remains-funerals; and Guards.
T	Photographic, mapping, printing, and publication services; e.g.— Film processing;

Code	Description
	Cataloging; Charting; Reproduction; Technical writing; Art; and Printing.
U	Training.
V	Transportation services; e.g.— Passenger and cargo transportation; Vessel charter; Vessel operation; Tug service; Stevedoring; Vehicle hire; and Railway equipment charter.
W	Lease or rental, except transportation equipment; e.g.— Lease of ADP or EA ¹ equipment; and Lease of earth-moving equipment.
X	Miscellaneous (includes all services not covered by any other code).
Y	Construction; i.e., new construction and major additions to existing buildings or facilities.
Z	Maintenance, repair, and alteration of real property; i.e., painting, building maintenance, alteration and repair, grounds maintenance and repair, roads maintenance and repair.

(2) Contracting officers shall use the following classification codes to describe supplies:

Code	Description
10	Weapons.
11	Nuclear ordnance.
12	Fire control equipment.
13	Ammunition and explosives.
14	Guided missiles.
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing, and ground handling equipment.
18	Space vehicles.
19	Ships, small craft, pontoons, and floating docks.
20	Ship and marine equipment.
22	Railway equipment.
23	Motor vehicles, trailers, and cycles.
24	Tractors.
25	Vehicular equipment components.
26	Tires and tubes.
28	Engines, turbines, and components.
29	Engine accessories.
30	Mechanical power transmission equipment.
31	Bearings.
32	Woodworking machinery and equipment.
34	Metalworking machinery.
35	Service and trade equipment.
36	Special industry machinery.
37	Agricultural machinery and equipment.
38	Construction, mining, excavating, and highway maintenance equipment.
39	Materials handling equipment.
40	Rope, cable, chain, and fittings.
41	Refrigeration and air-conditioning equipment.
42	Fire fighting, rescue, and safety equipment.
43	Pumps and compressors.
44	Furnace, steam plant, and drying equipment and nuclear reactors.

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FEDERAL ACQUISITION REGULATION (FAR)

Code	Description
45	Plumbing, heating, and sanitation equipment.
46	Water purification and sewage treatment equipment.
47	Pipe, tubing, hose, and fittings.
48	Valves.
49	Maintenance and repair shop equipment.
51	Hand tools.
52	Measuring tools.
53	Hardware and abrasives.
54	Prefabricated structures and scaffolding.
55	Lumber, millwork, plywood, and veneer.
56	Construction and building materials.
58	Communication equipment.
59	Electrical and electronic equipment components.
60	Fiber optics materials.
61	Electric wire, and power and distribution equipment.
62	Lighting fixtures and lamps.
63	Alarm and signal systems.
65	Medical, dental, and veterinary equipment and supplies.
66	Instruments and laboratory equipment.
67	Photographic equipment.
68	Chemicals and chemical products.
69	Training aids and devices.
70	General-purpose ADP equipment, software, supplies, and support equipment.
71	Furniture.
72	Household and commercial furnishings and appliances.
73	Food preparation and serving equipment.
74	Office machines.
75	Office supplies and devices.
76	Books, maps, and other publications.
77	Musical instruments, phonographs, and home-type radios.
78	Recreational and athletic equipment.
79	Cleaning equipment and supplies.
80	Brushes, paints, sealers, and adhesives.
81	Containers, packaging, and packing supplies.
83	Textiles, leather, furs, apparel and shoe findings, tents, and flags.
84	Clothing, individual equipment, and insignia.
85	Toiletries.
87	Agricultural supplies.
88	Live animals.
89	Subsistence.
91	Fuels, lubricants, oils, and waxes.
93	Nonmetallic fabricated materials.
94	Nonmetallic crude materials.
95	Metal bars, sheets, and shapes.
96	Ores, minerals, and their primary products.
99	Miscellaneous.

SUBPART 5.3—SYNOPSIS OF CONTRACT AWARDS

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the CBD awards exceeding \$25,000 that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required under paragraph (a) of this section if—

The notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;

(3) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97-217);

(4) The contract action is an order placed under a requirements contract;

(5) The award is made for perishable subsistence supplies; or

(6) The award is for utility services, other than telecommunications services, and only one source is available.

5.302 Preparation and transmittal of synopses of awards.

Contracting officers shall—

(a) Transmit synopses of contract awards in the same manner as prescribed in 5.207; and

(b) Complete synopsis format items defined in section 5.207, as appropriate. Under format item 17, include as relevant the following:

(1) The following details of f.o.b. destination contracts, when total shipments from origin to destination will exceed 200,000 pounds, and destinations are firm:

(i) Origin point of shipment when different from the address of the contractor.

(ii) Continental United States destination of shipment.

(iii) Scheduled delivery period (beginning and ending dates).

(2) A statement of the industries, crafts, processes, or component items for which subcontractors are desired in a geographic area indicated by the contractor. This information shall be included when requested by the prime contractor.

5.303 Announcement of contract awards.

(a) *Public Announcement.* Contracting officers shall make information available on awards over \$3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 4:00 p.m. Washington, DC time on the day of award. Contracts excluded from this reporting requirement include those placed with (1) the Small Business Administration under Section 8(a) of the Small Business

sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

(3) *Source-selection procedures.* Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see Subpart 15.6).

(4) *Contracting considerations.* For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or FAR deviations required (see Subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see Subpart 7.4) and why; and any other contracting considerations.

(5) *Budgeting and funding.* Describe how budget estimates were derived and discuss the schedule for obtaining adequate funds at the time when they are required (see Subpart 32.7).

(6) *Product descriptions.* In accordance with Part 10, explain the choice of product description types to be used in the acquisition.

(7) *Priorities, allocations, and allotments.* When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see Subpart 12.3).

(8) *Contractor versus Government performance.* Address the consideration given to OMB Circular No. A-76 (see Subpart 7.3).

(9) *Management information requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

(10) *Make or buy.* Discuss any consideration given to make-or-buy programs (see Subpart 15.7).

(11) *Test and evaluation.* To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a major system acquisition. If concurrency is planned, discuss the extent of testing to be accomplished before production release.

(12) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial products (see Part 11);

(ii) The reliability, maintainability, and quality assurance requirements, including any planned use of

warranties (see Part 46); and

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see Part 27).

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

(13) *Government-furnished property.* Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see Part 45).

(14) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

(15) *Environmental considerations.* Discuss environmental issues associated with the acquisition, the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environment-related requirements to be included in solicitations and contracts.

(16) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 4.4).

(17) *Other considerations.* Discuss, as applicable, energy conservation measures, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere.

(18) *Milestones for the acquisition cycle.* Address the following steps and any others appropriate:

Acquisition plan approval.

Statement of work.

Specifications.

Data requirements.

Completion of acquisition-package preparation.

Purchase request.

Justification and approval for other than full and open competition where applicable and/or any required D&F approval.

Issuance of synopsis.

Issuance of solicitation.

Evaluation of proposals, audits, and field reports.

Beginning and completion of negotiations.

Contract preparation, review, and clearance.

Contract award.

(19) *Identification of participants in acquisition plan preparation.* List the individuals who participated in

7.106

preparing the acquisition plan, giving contact information for each.

7.106 Additional requirements for major systems.

(a) In planning for the solicitation of a major system (see Part 34) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

(1) Items which are currently available within the supply system of the agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source; and

(2) Items which the Government will be able to acquire competitively in the future if they are likely to be needed in substantial quantities during the system's service life.

(b) In planning for the solicitation of a major system (see Part 34) production contract, planners shall consider requiring offerors to include, in their offers, proposals identifying opportunities to assure that the Government will be able to obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements may include the following:

(1) Proposals to provide the Government the right to use technical data to be provided under the contract for competitive future acquisitions, together with the cost to the Government, if any, of acquiring such technical data and the right to use such data.

(2) Proposals for the qualification or development of multiple sources of supply for competitive future acquisitions.

(c) In determining whether to apply paragraphs (a) and (b) above, planners shall consider the purposes for which the system is being acquired and the technology necessary to meet the system's required capabilities. If such proposals are required, the contracting officer shall consider them in evaluating competing offers. In noncompetitive awards, the factors in paragraphs (a) and (b) above, may be considered by the contracting officer as objectives in negotiating the contract.

SUBPART 7.2—PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

7.200 Scope of subpart.

This subpart prescribes policies and procedures for gathering information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased.

7.201 Reserved.**7.202 Policy.**

(a) Agencies are required by 10 U.S.C. 2384(a) and 41 U.S.C. 253(f) to procure supplies in such quantity as (1) will

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result in the total cost and unit cost most advantageous to the Government, where practicable, and (2) does not exceed the quantity reasonably expected to be required by the agency.

(b) Each solicitation for a contract for supplies is required, if practicable, to include a provision inviting each offeror responding to the solicitation (1) to state an opinion on whether the quantity of the supplies proposed to be acquired is economically advantageous to the Government, and (2) if applicable, to recommend a quantity or quantities which would be more economically advantageous to the Government. Each such recommendation is required to include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

7.203 Solicitation provision.

Contracting officers shall insert the provision at 52.207-4, Economic Purchase Quantity—Supplies, in solicitations for supplies. The provision need not be inserted if the solicitation is for a contract under the General Services Administration's multiple award schedule contract program, or if the contracting officer determines that (a) the Government already has the data, (b) the data is otherwise readily available, or (c) it is impracticable for the Government to vary its future requirements.

7.204 Responsibilities of contracting officers.

(a) Contracting officers are responsible for transmitting offeror responses to the solicitation provision at 52.207-4 to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for supplies under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by offerors are only one of many data inputs required for determining the most economical order quantities, contracting officers should generally take no action to revise quantities to be acquired in connection with the instant procurement. However, if a significant price variation is evident from offeror responses, and the potential for significant savings is apparent, the contracting officer shall consult with the cognizant inventory manager or requirements development activity before proceeding with an award or negotiations. If this consultation discloses that the Government should be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the solicitation for the item should be amended or canceled and a new requisition should be obtained.

SUBPART 7.3—CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

(3) Maximum practicable competition for small purchases ordinarily can be obtained without soliciting quotations from sources outside the trade area in which the purchasing office is located. Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, nor shall quotations be solicited on a personal preference basis. New supply sources, disclosed through trade journals or other media, shall be continuously reviewed and, if appropriate, added to the list of available sources.

(4) (i) Unless exempted from this requirement by the head of the contracting activity, each contracting office shall maintain a small purchase source list (or lists, if more convenient) and shall record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.

(B) Small disadvantaged business.

(C) Certified in a labor surplus area.

(ii) The status information shall be used to ensure that small business concerns are given opportunities to submit quotations in response to small purchase solicitations. The names of additional concerns may be obtained from the Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. (See Subpart 19.1 for pertinent definitions).

(5) Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations.

(6) The following factors influence the number of quotations required in connection with any particular purchase:

(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(7) If suppliers furnish standing price quotations on supplies or services required on an intermittent and recurring basis, the information may be used in lieu of obtaining individual quotations each time a purchase is con-

templated. The buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum discounts.

(8) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and request it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(9) Notification to unsuccessful suppliers shall be given only if requested.

(c) *Data to support small purchases over \$1,000.* (1) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, or any other reasonable basis. In any case, the contracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased as an aid to determine price reasonableness.

(2) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

(3) The following illustrate the extent to which quotation information should be recorded:

(i) *Oral solicitations.* The contracting office shall establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. Handwritten notations on the purchase requisition are satisfactory for this purpose.

(ii) *Written solicitations.* Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.

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(4) Purchasing offices shall retain data supporting small purchases to the minimum extent and duration necessary for management review purposes. (See Subpart 4.8, Contract Files.)

13.107 Solicitation and evaluation of quotations.

(a) *Forms.* (1) Except when quotations are solicited orally, Standard Form 18, Request for Quotations (illustrated in 53.301-18), is designed for use in obtaining price, delivery, and related information from suppliers.

(2) Standard Form 18 is available for use by all agencies, and shall be used when using the form is considered economical and efficient for obtaining written quotations for small purchases.

(3) Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.

(4) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or teletype.

(5) Each agency-designed request for quotations form shall conform with Standard Form 18, insofar as practical.

(6) When using a teletype for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.

(b) *Discounts.* Consistent with the applicable principles in 14.407-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(c) *Transportation charges.* Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(d) *Economic purchase quantities (supplies).* Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in Subpart 7.2. If quotations are solicited in writing, contracting officers shall comply with 7.203 and 7.204. If quotations are solicited orally, contracting officers shall orally request the information covered by the provision at 52.207-4 in accordance with the instructions at 7.203 and then comply with 7.204.

13.108 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract comes into being when the supplier accepts the offer.

(b) When appropriate, the contracting officer may request the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the

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FEDERAL ACQUISITION REGULATION (FAR)

supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)

13.109 Agency use of indefinite delivery contracts.

Small purchase costs and processing time may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore, contracting offices are encouraged to seek opportunities to cooperate with each other to achieve small purchase efficiency and economy through the use of indefinite delivery contracts.

SUBPART 13.2—BLANKET PURCHASE AGREEMENTS**13.201 General.**

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPA's are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(c) BPA's should be established at the appropriate level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(d) The use of BPA's does not exempt the agency from responsibility for keeping obligations and expenditures within available funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions.

13.202 Reserved.**13.203 Establishment of Blanket Purchase Agreements.****13.203-1 General.**

(a) The following are circumstances under which contracting officers may establish BPA's:

(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) A BPA should be established without a purchase requisition.

(c) A BPA shall not cite accounting and appropriation data (but see 13.204(e)(4)).

FAC 84-29 AUGUST 24, 1987

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.102

SIC	DESCRIPTION	SIZE
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DIVISION A—AGRICULTURE

Major Group 01-Agricultural Production-Crops

0111-		
0191	Agricultural Production-Crops	\$0.5

Major Group 02-Agricultural Production-Livestock

0211	Beef Cattle Feedlots (Custom)	\$1.0
0212-	Agricultural Production-Livestock, except	
0291	0211 and 0252	\$0.5
0252	Chicken Eggs	\$1.0

Major Group 07-Agricultural Services

All SIC's	\$3.5
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Major Group 08-Forestry

All SIC's	\$3.5
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Major Group 09-Fishing, Hunting, and Trapping

All SIC's	\$2.0
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DIVISION B—MINING

Major Group 10-Metal Mining

1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferrolloy Ores, Except Vanadium	500
1081	Metal Mining Services	\$3.5
1094	Uranium-Radium-Vanadium Ores	500
1099	Metal Ores, N.E.C.	500

Major Group 12-Bituminous Coal and Lignite Mining

1221	Bituminous and Lignite Coal Mining, Surface, and Bituminous Coal Preparation Plants	500
1222	Bituminous Coal Mining, Underground ..	500
1231	Anthracite Mining	500
1241	Coal Mining Services	\$3.5

Major Group 13-Oil and Gas Extraction

1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1331	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services ..	\$3.5
1389	Oil and Gas Field Services, N.E.C.	\$3.5

SIC	DESCRIPTION	SIZE
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Major Group 14-Mining and Quarrying of Non-Metallic Minerals, Except Fuels

1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay and Related Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mining, N.E.C.	500
1481	Nonmetallic Minerals (Except Fuels) Services	\$3.5
1499	Nonmetallic Minerals, N.E.C.	500

DIVISION C—CONSTRUCTION

Major Group 15-Building Construction-General Contractors and Operative Builders

1521	General Contractors-Single-Family Houses	\$17.0
1522	General Contractors-Residential Buildings, Other Than Single-Family	\$17.0
1531	Operative Builders	\$17.0
1541	General Contractors-Industrial Buildings and Warehouses	\$17.0
1542	General Contractors-Nonresidential Buildings, Other Than Industrial Buildings and Warehouses	\$17.0

Major Group 16-Construction Other Than Building Construction-General Contractors

1611	Highway and Street Construction	\$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction	\$17.0
1623	Water, Sewer, Pipe Line, Communication and Power Line Construction	\$17.0
1629	Heavy Construction, Except Dredging, N.E.C.	\$17.0
1629	Dredging and Surface Cleanup Activities ²	\$9.5

Major Group 17-Construction-Special Trade Contractors

1711	Plumbing, Heating (Except Electric), and Air Conditioning	\$7.0
1721	Painting, Paper Hanging, and Decorating ..	\$7.0
1731	Electrical Work	\$7.0

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise. N.E.C.: Not Elsewhere Classified.

FAC 84-28 APRIL 16, 1987

19.102

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SIC	DESCRIPTION	SIZE	SIC	DESCRIPTION	SIZE
1741	Masonry, Stone Setting, and Other Stonework	\$7.0	2052	Cookies and Crackers	750
1742	Plastering, Drywall, Acoustical, and Insulation Work	\$7.0	2053	Frozen Bakery Products	500
1743	Terrazzo, Tile, Marble, and Mosaic Work	\$7.0	2061	Cane Sugar, Except Refining Only	500
1751	Carpentering	\$7.0	2062	Cane Sugar Refining	750
1752	Floor Laying and Other Floor Work, N.E.C.	\$7.0	2063	Beet Sugar	750
1761	Roofing and Sheet Metal Work	\$7.0	2064	Confectionery Products	500
1771	Concrete Work	\$7.0	2066	Chocolate and Cocoa Products	500
1781	Water Well Drilling	\$7.0	2067	Chewing Gum	500
1791	Structural Steel Erection	\$7.0	2068	Salted and Roasted Nuts and Seeds	500
1793	Glass and Glazing Work	\$7.0	2074	Cottonseed Oil Mills	500
1794	Excavating and Foundation Work	\$7.0	2075	Soybean Oil Mills	500
1795	Wrecking and Demolition Work	\$7.0	2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
1796	Installation or Erection of Building Equipment, N.E.C.	\$7.0	2077	Animal and Marine Fats and Oils	500
1799	Special Trade Contractors, N.E.C.	\$7.0	2079	Shortening, Table Oils, Margarine and Other Edible Fats and Oils, N.E.C. ..	750
--	Base Housing Maintenance ¹⁶	\$7.0	2082	Malt Beverages	500
DIVISION D-MANUFACTURING³			2083	Malt	500
Major Group 20-Food and Kindred Products			2084	Wines, Brandy, and Brandy Spirit	500
2011	Meat Packing Plants	500	2085	Distilled, Rectified and Blended Liquors ..	750
2013	Sausages and Other Prepared Meat Products	500	2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2015	Poultry Slaughtering, Dressing and Processing	500	2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500
2021	Creamery Butter	500	2091	Canned and Cured Seafoods	500
2022	Cheese, Natural and Processed	500	2092	Fresh or Frozen Packaged Fish and Seafoods	500
2023	Condensed and Evaporated Milk	500	2095	Roasted Coffee	500
2024	Ice Cream and Frozen Desserts	500	2096	Potato Chips and Similar Products	500
2026	Fluid Milk	500	2097	Manufactured Ice	500
2032	Canned Specialties	1,000	2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2033	Canned Fruits, Vegetables, Preserves, Jams and Jellies ⁴	500	2099	Food Preparations, N.E.C.	500
2034	Dehydrated Fruits, Vegetables, and Soups	500	Major Group 21-Tobacco Manufacturers		
2035	Pickled Fruits and Vegetables, Vegetable Sauces, and Seasoning, and Salad Dressings	500	2111	Cigarettes	1,000
2037	Frozen Fruit, Fruit Juices, and Vegetables	500	2121	Cigars	500
2038	Frozen Specialties, N.E.C.	500	2131	Tobacco (Chewing and Smoking) and Snuff	500
2041	Flour and Other Grain Mill Products	500	2141	Tobacco Stemming and Redrying	500
2043	Cereal Breakfast Foods	1,000	Major Group 22-Textile Mill Products		
2044	Rice Milling	500	2211	Broad Woven Fabric Mills, Cotton	1,000
2045	Blended and Prepared Flour	500	2221	Broad Woven Fabric Mills, Man-Made Fiber, and Silk	500
2046	Wet Corn Milling	750	2231	Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing)	500
2047	Dog and Cat Food	500	2241	Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-Made Fiber	500
2048	Prepared Feeds, N.E.C.	500			
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500			

Notes: Size standards preceded by a dollar sign (\$) are in millions of dollars. All others are in number of employees unless specified otherwise.
N.E.C.: Not Elsewhere Classified.

(iii) Personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract

(b) An offeror that is newly entering into a manufacturing activity must show under the criteria in 41 CFR 50-206.51(b) that the offeror—

(1) Has made written, legally binding arrangements or commitments to enter a manufacturing business. (An offeror should not be barred from receiving the award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of a Government contract);

(2) Has not been set up solely to produce on a Government contract and that its operations will not be terminated upon completion of that contract;

(3) Has established arrangements for production on a continuing basis of the particular materials, supplies, or equipment desired by the Government; and

(4) Has documentation to prove that necessary written, legally binding arrangements or commitments have been met before award.

(c) Every offeror must qualify as a manufacturer in its own rights under the criteria in 41 CFR 50-206.51(e) and (f), and must show the following:

(1) That it is currently capable of manufacturing on its premises the supplies called for under the contract or, if it is newly entering into manufacturing, that it has made written, legally binding commitments before award to enable it to produce such supplies on its premises. (The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement).

(2) That all evidence documenting the making of necessary prior arrangements or definite commitments is in the name of the offeror.

(d) Generally, an offeror that performs assembly operations as described in 41 CFR 50-206.52 may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end item to be supplied to the Government, and it—

(1) Produces end items on its premises by assembling component parts using machines, tools, workers, and the assembly constitutes substantial or significant fabrication or production of the end item; or

(2) Has the facilities to produce on its premises a significant portion of the required component parts needed for the end item for which the Government contracted even if it only performs assembly operations under a particular acquisition.

(e) An offeror's eligibility status as a contractor or a subcontractor on other contracts subject to the Act is not determinative evidence of the offeror's present eligibility as a manufacturer (see 41 CFR 50-206.51(g)).

22.606-2 Regular dealer.

(a) An offeror qualifies as a regular dealer under the criteria in 41 CFR 50-206.53 if it shows before the award that it is a regular dealer dealing in the particular supplies of the general character offered to the Government. Included in the criteria in 41 CFR 50-206.53 which an offeror must meet are the following:

(1) It has an establishment, or a leased or assigned space, in which it regularly maintains a stock of supplies in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(2) The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by (i) a stock of sample or display items, (ii) a stock consisting of surplus items remaining from prior orders, (iii) stock unrelated to the supplies offered, or (iv) a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(3) The supplies stocked are of the same general character as those to be supplied under the contract. To be of the same general character, the items to be supplied must be either identical with those in stock or be supplies for which dealers in the same line of business would be an obvious source.

(4) Sales are made regularly from stock on a recurring basis, are not only occasional, or constitute an exception to the usual operations of the business. The proportion of sales from stock that will satisfy this requirement will depend upon the character of the business.

(5) Sales are made regularly in the usual course of business to the public; i.e., to purchasers other than Federal, State or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(6) The business is an established and going concern. It is not sufficient to show that arrangements have been made to set up such a business.

(b) For certain specific products (lumber and timber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, and specialty advertising products), there are alternate qualifications for regular dealers in which the dealer need not physically maintain a stock. The requirements under the alternative qualifications are in 41 CFR 50-201.101(a)(2) and 50-201.604.

(c) Coal dealers are exempted from the regular dealer requirements if they meet the terms and conditions prescribed by the Secretary of Labor in 41 CFR 50-201.604(a). If these terms and conditions are not

met, coal dealers must meet the requirements in this subsection.

22.607 Agents.

A "manufacturer" or "regular dealer" may bid, negotiate, and contract through an authorized agent if the agency is disclosed and the agent acts and contracts in the name of the principal (see Subpart 3.4, Contingent Fees).

22.608 Procedures.

22.608-1 Offeror's representation.

For each solicitation that may result in a contract subject to the Act, the contracting officer shall obtain a representation from the prospective contractor that it is a manufacturer or regular dealer of the supplies offered (see 22.610(a)).

22.608-2 Determination of eligibility.

(a) The responsibility for applying the eligibility requirements set forth in 22.606 rests in the first instance with the contracting officer.

(b) The contracting officer shall investigate and determine the eligibility of the offeror and not rely on the offeror's representation that it is a manufacturer or regular dealer in the following circumstances:

(1) The contracting officer has knowledge that raises the question of the validity of the representation.

(2) A protest has been lodged pursuant to 22.608-3.

(3) The offeror that is in line for contract award has not previously been awarded a contract subject to the Act by the individual acquisition office.

(4) A preaward investigation or survey of the offeror's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, and subcontracting and labor resources of the offeror.

(c) The Department of Labor does not conduct preaward investigations nor render final determinations of eligibility until the contracting officer initially has determined whether the requirements have been met and any negative determinations involving small businesses have been confirmed by the Small Business Administration.

(d) If the offeror's representation is not accepted, the contracting officer shall make a determination as to whether all of the applicable eligibility requirements have been met by obtaining and considering all available factual evidence including—

(1) Preaward surveys;

(2) Experience of other acquisition offices;

(3) Information available from the cognizant contract administration office;

(4) Information provided directly by the offeror; and

(5) Such other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on site survey conducted specifically for that purpose.

(e) The contracting officer shall reject (1) offers from all offerors whose representation indicates that they are not manufacturers or regular dealers of the supplies offered and (2) offers that qualify or place a reservation on the representation and stipulations to avoid full compliance with the Act.

(f)(1) If the contracting officer determines that an apparently successful offeror that is not a small business concern is ineligible, the following procedures shall apply:

(i) The offeror shall be notified in writing that—

(A) It does not meet the eligibility requirements and the specific reasons therefore; and

(B) It may protest the determination by submitting evidence concerning its eligibility to the contracting officer within 10 working days.

(ii) If, after review of the offeror's evidence, the contracting officer's position has not changed, the offeror's protest and all pertinent material shall be forwarded, in accordance with agency procedures, to the DOL, Administrator of the Wage and Hour Division, for a final determination.

(2) If the offeror is a small business concern, the notification and protest procedures in subparagraph (1) above shall be followed except that any determination of ineligibility, whether or not the offeror protests the determination, shall be forwarded to the Administrator of the SBA and the offeror so notified in writing. The SBA shall review the determination and—

(i) If it disagrees with the contracting officer's determination, reverse the determination and forward to the contracting officer a certification of the offeror's eligibility; or

(ii) If it agrees with the contracting officer's determination, forward the case to the DOL, Administrator of the Wage and Hour Division, for final determination.

(3) If the contracting officer forwards the case to the DOL or the SBA for review of eligibility, the award should normally be held in abeyance (see 22.608-3(c)) until the contracting officer receives a final determination from the DOL or the SBA, unless the contracting officer finds that award should be made immediately (see 22.608-4).

(4) The contracting officer shall notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

22.608-3 Protests against eligibility.

(a) When, before award (see 22.608-6 for post-award protests), another offeror challenges the eligibility of the apparently successful offeror, the contracting officer shall—

PART 28

BONDS AND INSURANCE

28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against damages under sealed bid and negotiated contracts. It covers bid guarantees, bonds, sureties, and insurance. The terms "bid" and "bidders" include "proposal" and "offerors."

28.001 Definitions.

"Attorney-in-fact," as used in this part, means an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety (see also "power of attorney").

"Bid guarantee" means a form of security assuring that the bidder (a) will not withdraw a bid within the period specified for acceptance and (b) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time allowed, after receipt of the specified forms.

"Bond" means a written instrument executed by a bidder or contractor (the "principal"), and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. The types of bonds and related documents are as follows:

(a) An advance payment bond secures fulfillment of the contractor's obligations under an advance payment provision.

(b) An annual bid bond is a single bond furnished by a bidder, in lieu of separate bonds, which secure all bids (on other than construction contracts) requiring bonds submitted during a specific Government fiscal year.

(c) An annual performance bond is a single bond furnished by a contractor, in lieu of separate performance bonds, to secure fulfillment of the contractor's obligations under contracts (other than construction contracts) requiring bonds entered into during a specific Government fiscal year.

(d) A patent infringement bond secures fulfillment of the contractor's obligations under a patent provision.

(e) A payment bond assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

(f) A performance bond secures performance and fulfillment of the contractor's obligations under the contract.

"Consent of surety" means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

"Insurance," as used in this part, means a contract which provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

"Penal sum" or "penal amount" means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated.

"Power of attorney," as used in this part, means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal which appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also "attorney-in-fact").

"Reinsurance" means a transaction which provides that a surety, for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued.

"Surety" means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(a) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(b) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(c) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

SUBPART 28.1—BONDS

28.100 Scope of subpart.

This subpart prescribes requirements and procedures for the use of bonds and all types of bid guarantees.

28.101 Bid guarantees.

28.101-1 Policy on use.

(a) The use of bid guarantees shall be required only when a performance bond or a performance and payment bond is required (see 28-102 and 28.103).

28.101-2

(b) All types of bid guarantees are acceptable for supply or service contracts (see annual bid bonds and annual performance bonds coverage in 28.001). Only separate bid guarantees are acceptable in connection with construction contracts. Agencies may specify that only separate bid bonds are acceptable in connection with construction contracts.

(c) The head of the contracting activity may waive the requirement for bid guarantees if it is determined that bid guarantees are not in the best interest of the Government in contracting for construction to be performed overseas.

28.101-2 Amount required.

The contracting officer shall determine a bid guarantee amount that is adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed \$3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

28.101-3 Contract clause.

(a) When a bid guarantee is required, the solicitation shall contain a statement to that effect, and provide sufficient details for bidders to determine the amount of the bid guarantee.

(b) The contracting officer shall insert the clause at 52.228-1, Bid Guarantee, in solicitations and contracts that contain a requirement for a bid guarantee. A clause substantially the same as this may be used for negotiated contracts. This clause may be appropriately modified for use in connection with construction solicitations and contracts when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101-1(b).

28.101-4 Noncompliance with bid guarantee requirements.

Noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the following situations when the noncompliance shall be waived, unless the contracting officer determines in writing that acceptance of the bid would be detrimental to the Government's interest:

(a) Only one bid is received. In this case, the contracting officer may require the furnishing of the bid guarantee before award.

(b) The amount of the bid guarantee submitted is less than required but is equal to or greater than the difference between the bid price and the next higher acceptable bid.

(c) The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity bid upon, is sufficient for a quantity for which the bidder is otherwise eligible for award. Any award to the bidder shall not exceed the quantity covered by the bid guarantee.

(d) The bid guarantee is received late, and late receipt is waived under 14.304.

(e) A bid guarantee becomes inadequate as a result of the correction of a mistake under 14.406 (but only if the bidder will increase the bid guarantee to the level required for the

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corrected bid).

(f) A telegraphic bid modification is received without corresponding modification of the bid guarantee, if the modification expressly refers to the previous bid and the bidder corrects any deficiency in bid guarantee.

28.102 Performance and payment bonds for construction contracts.**28.102-1 General.**

(a) The Miller Act (40 U.S.C. 270a-270f) requires performance and payment bonds for any construction contract exceeding \$25,000, except that this requirement may be waived (1) by the contracting officer for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such bond, or (2) as otherwise authorized by the Miller Act or other law.

(b) The contractor shall furnish all bonds, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.

28.102-2 Amount required.

(a) *Performance bonds.* (1) The penal amount of performance bonds shall be 100 percent of the original contract price, unless the contracting officer determines that a lesser amount would be adequate for the protection of the Government.

(2) The Government may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) *Payment bonds.* (1) The penal amount of payment bonds shall equal—

(i) 50 percent of the contract price if the contract price is not more than \$1 million;

(ii) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) \$2 ½ million if the contract price is more than \$5 million.

(2) If the original contract price is \$5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection as revised shall meet the requirement of subparagraph (1) immediately above.

(3) The Government shall secure additional protection by directing the contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) *Requirements and indefinite-quantity contracts.* (1) When determining the penal sum of bonds for requirements contracts, the contracting officer shall consider the contract price to be the price payable for the estimated quantity.

(2) When determining the penal sum of bonds for indefinite-quantity contracts, the contracting officer shall consider the contract price to be the price payable for the specified minimum quantity. When the

PART 31

CONTRACT COST PRINCIPLES AND PROCEDURES

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clude contracts for vessels, aircraft, or other kinds of personal property.

(b) Except as otherwise provided in (d) below, the cost principles and procedures in Subpart 31.2 shall be used in the pricing of contracts and contract modifications in this category if cost analysis is performed as required by 15.805-3.

(c) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 (as modified by (d) below) by reference in contracts in this category as the basis for—

- (1) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts thereunder;
- (2) Negotiating indirect cost rates;
- (3) Proposing, negotiating, or determining costs under terminated contracts;
- (4) Price revision of fixed-price incentive contracts; and
- (5) Pricing changes and other contract modifications.

(d) Except as otherwise provided in this paragraph (d), the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with Subpart 31.2.

(1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in 31.109, for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(2) "Construction equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates and any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost

of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision.

(ii) Reasonable costs of renting construction equipment are allowable (but see paragraph (C) below).

(A) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with 31.205-36(b)(3).

(3) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

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(4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

31.106 Facilities contracts.**31.106-1 Applicable cost principles.**

The cost principles and procedures applicable to the evaluation and determination of costs under facilities contracts (as defined in 45.301), and subcontracts thereunder, will be governed by the type of entity to which a facilities contract is awarded. Except as otherwise provided in 31.106-2 below, Subpart 31.2 applies to facilities contracts awarded to commercial organizations; Subpart 31.3 applies to facilities contracts awarded to educational institutions; and 31.105 applies to facilities contracts awarded to construction contractors. Whichever cost principles are appropriate will be used in the pricing of facilities contracts and contract modifications if cost analysis is performed as required by 15.805-3. In addition, the contracting officer shall incorporate the cost principles and procedures appropriate in the circumstances (e.g., Subpart 31.2; Subpart 31.3; or 31.105) by reference in facilities contracts as the basis for—

(a) Determining reimbursable costs under facilities contracts, including cost-reimbursement subcontracts thereunder;

(b) Negotiating indirect cost rates; and

(c) Determining costs of terminated contracts when the contractor elects to "voucher out" costs (see Subpart 49.3), and for settlement by determination (see 49.109-7).

31.106-2 Exceptions to general rules on allowability and allocability.

(a) A contractor's established accounting system and procedures are normally directed to the equitable allocation of costs to the types of products which the contractor produces or services rendered in the course of normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services.

(b) Advance agreements (see 31.109) should be made between the contractor and the contracting officer as to indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of contractor facilities may range from charging all these costs to this acquisition to not charging any. When necessary to produce an equitable result, the contractor's usual method of allocating indirect cost shall be varied, and appropriate adjustment shall be made to the pools of indirect cost and the bases of their distribution.

(c) The purchase of completed facilities (or services in connection with the facilities) from outside sources does not

involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(d) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities may involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditures of the classes of labor used for the performance of the facilities work may be allocated to the facilities contract. Thus, a facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor's business by the use of the contractor's direct labor and manufacturing processes, the indirect costs normally allocated to all that work may be allocated to the facilities contract.

31.106-3 Contractor's commercial products.

If facilities constituting the contractor's usual commercial products (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.

31.107 Contracts with State, local, and federally recognized Indian tribal governments.

(a) Subpart 31.6 provides principles and standards for determining costs applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal governments, except contracts with—

(1) Publicly financed educational institutions subject to Subpart 31.3; or

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(b) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

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sistent with 31.201-4 and 31.203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

31.205-43 Trade, business, technical and professional activity costs.

The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) Meetings and conferences, including meals, transportation, rental of meeting facilities and other incidental costs when the primary purposes of the incurrence of the costs is the dissemination of technical information or stimulation of production.

31.205-44 Training and education costs.

(a) *Allowable costs.* Training and education costs are allowable to the extent indicated below.

(b) *Vocational training.* Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include (1) salaries or wages of trainees (excluding overtime compensation), (2) salaries of the director of training and staff when the training program is conducted by the contractor, (3) tuition and fees when the training is in an institution not operated by the contractor, and/or (4) training materials and textbooks.

(c) *Part-time college level education.* Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to—

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor;

(3) Training materials and textbooks; and

(4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see paragraph (h) below).

(d) *Full-time education.* Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total

period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(e) *Specialized programs.* Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this subsection.

(f) *Other expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with 31.205-11, 31.205-17, 31.205-24, and 31.205-36.

(g) *Grants.* Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) Advance agreements.

(1) Training and education costs in excess of those otherwise allowable under (c) and (d) of this subsection, including subsistence, salaries or any other emoluments, may be allowed to the extent set forth in an advance agreement negotiated under 31.109. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors as—

(i) The length of employees' service with the contractor;

(ii) Employee's past performance and potential;

(iii) Whether employees are in formal development programs; and

(iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.

(i) *Training or education costs for other than bona-fide employees.* Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona-fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is

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inordinately expensive may be included in overseas differential.

(j) *Employee dependent education plans.* Costs of college plans for employee dependents are unallowable.

31.205-45 Transportation costs.

Allowable transportation costs include freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered. When these costs can be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items. When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

31.205-46 Travel costs.

(a)(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to paragraphs (b) through (f) of this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the continuous 48 United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 022-001-81003-7;

(ii) Joint Travel Regulations, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 908-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this subparagraph, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402, Stock No. 744-008-00000-0.

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices provided that a receipt is required for each expenditure in excess of \$25.00. The approved justification required by (a)(3)(ii) and, if applicable, (a)(3)(iii) of this subparagraph must be retained.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. Only the coverage in the referenced regulations dealing with special or unusual situations, the maximum per diem rates, and definitions of lodging, meals, and incidental expenses are incorporated herein.

(5) An advance agreement (see 31.109) with respect to compliance with subparagraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

(b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(c) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract under 31.202.

(d) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements.

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CONTRACT FINANCING

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PART 32

CONTRACT FINANCING

32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This includes—

- (a) Payment methods, including partial payments and progress payments based on percentage or stage of completion;
- (b) Loan guarantees, advance payments, and progress payments based on costs;
- (c) Administration of debts to the Government arising out of contracts;
- (d) Contract funding, including the use of contract clauses limiting costs or funds;
- (e) Assignment of claims to aid in private financing; and
- (f) Selected payment clauses.

32.001 Definition.

"Contract action," as used in this part, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

SUBPART 32.1—GENERAL

32.100 Scope of subpart.

This subpart provides policies and procedures applicable to the general subject of contract financing and payment.

32.101 Authority.

The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091).

32.102 Description of contract financing methods.

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making subadvances to subcontractors.

(b) Progress payments based on costs are made on the

basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

- (1) Payments based on the percentage or stage of completion accomplished;
 - (2) Payments for partial deliveries accepted by the Government; or
 - (3) Partial payments for a contract termination proposal.
- (c) Loan guarantees are made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense.

(d) Partial payments for accepted supplies and services that are only a part of the contract requirements are authorized under section 305 of the Federal Property and Administrative Services Act (41 U.S.C. 255). Although partial payments are generally treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, agencies shall use this payment method.

(e) (1) Progress payments based on a percentage or stage of completion are authorized by the statutes cited in 32.101.

(2) This type of progress payment may be used as a payment method under agency procedures. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

32.103 Progress Payments Construction Contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the contracting officers should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed 10 percent of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

performance of essential contracts. Government financing shall be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Contract financing shall be administered so as to aid, not impede, the acquisition. At the same time, the contracting officer shall avoid any undue risk of monetary loss to the Government through the financing. The contractor's use of the contract financing provided and the contractor's financial status shall be monitored.

(b) If the contractor is a small business concern, the contracting officer shall give special attention to meeting the contractor's contract financing need. However, a contractor's receipt of a certificate of competency from the Small Business Administration has no bearing on the contractor's need for or entitlement to contract financing.

32.105 Uses of contract financing.

(a) Contract financing methods covered in this part are intended to be self-liquidating through contract performance. Consequently, agencies shall only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets. However, under loan guarantees, exceptions may be made for—

(1) Facilities expansion of a minor or incidental nature, if a relatively small part of the guaranteed loan is used for the expansion and the contractor's repayment would not be delayed or impaired; or

(2) Other instances of facilities expansion for which contract financing is appropriate under agency procedures.

(b) The limitations in this section do not apply to contracts under which facilities are being acquired for Government ownership.

32.106 Order of preference.

The contracting officer shall consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's interest in a specific case:

(a) Private financing without Government guarantee. It is not intended, however, that the contractor be required to obtain private financing (1) at unreasonable terms, or (2) from other agencies.

(b) Progress payments based on costs at customary rates (see 32.501-1).

(c) Loan guarantees.

(d) Progress payments based on costs with unusual terms (see 32.501).

(e) Advance payments (see exceptions in 32.402(b)).

32.107 Need for contract financing not a deterrent.

(a) If the contractor or offeror meets the standards prescribed for responsible prospective contractors at 9.104, the contracting officer shall not treat the contractor's need for contract financing as a handicap for a contract award; e.g., as a responsibility factor or evaluation criterion.

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(b) The contractor should not be disqualified from contract financing solely because the contractor failed to indicate a need for contract financing before the contract was awarded.

32.108 Financial consultation.

Each contracting office should have available and use the services of contract financing personnel competent to evaluate credit and financial problems. In resolving any questions concerning (a) the financial capability of an offeror or contractor to perform a contract or (b) what form of contract financing is appropriate in a given case, the contracting officer should consult the appropriate contract financing office.

32.109 Termination financing.

To encourage contractors to invest their own funds in performance despite the susceptibility of the contract to termination for the convenience of the Government, the contract financing procedures under this part may be applied to the financing of terminations either in connection with or independently of financing for contract performance (see 49.112-1).

32.110 Contract performance in foreign countries.

(a) In applying the coverage of Part 32 to a contract performed partly or completely in a foreign country, the contracting officer shall give due consideration to the sovereignty, laws, and procedures of the country concerned and shall obtain legal advice as necessary. The legal advice may indicate a need for additional protective arrangements within the foreign jurisdiction or for deviations from the contract clauses prescribed in this part.

(b) The contracting officer shall act as necessary to comply with applicable foreign laws, while providing the most effective protection of the Government's interest.

32.111 Contract clauses.

(a) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates, in accordance with agency regulations—

(1) The clause at 52.232-1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated;

(2) The clause at 52.232-2, Payment under Fixed-Price Research and Development Contracts, in solicitations and contracts when a fixed-price research and development contract is contemplated;

(3) The clause at 52.232-3, Payments under Personal Services Contracts, in solicitations and contracts for personal services;

(4) The clause at 52.232-4, Payments under Transportation Contracts and Transportation-Related Services Contracts, in solicitations and contracts for transportation or transportation-related services;

(5) The clause at 52.232-5, Payments under Fixed-

(6) The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (.) (research and development) work.

(7) The contract is solely for the management and operation of a Government-owned plant.

(8) The following unusual facts and circumstances favor making advance payments to the Contractor without interest:

[List the pertinent facts and circumstances.]

DETERMINATION

(b) Based on the findings in (a) above, the undersigned determined that the making of the proposed advance payments, (with interest at the rate of ...*[Insert the interest rate computed in accordance with 32.407]* percent on the daily unliquidated balance of the advance payments,) (without interest, except as provided by the proposed advance payment clause,) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

(c) The advance payments, of which (the amount at any time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed \$....., are hereby authorized under (section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255)) (the Armed Services Procurement Act (10 U.S.C. 2307)) (the Extraordinary Contracting Authority of Government Agencies in Connection with National Defense Functions (50 U.S.C. 1431-1435) and Executive Order No. 10789 of November 14, 1958 (3 CFR 1958 Supp. pp. 72-74)) *[or, if other, cite appropriate authority]* on (terms substantially as contained in the proposed advance payment clause, a copy (an outline) of which is annexed to this authorization) (the following terms:) *[Insert the appropriate terms.]*

(All prior authorizations for advance payments under Contract No. are superseded.)

.....
(Signature)

.....
(Name typed)

.....
(Title of authorized official)

[Each Findings, Determination, and Authorization shall be individually prepared to fit the particular circumstances at hand. Subparagraphs (a)(1), (2), (3) and (4) and paragraphs (b) and (c) shall be used in each case. If the contract is (a) for experimental, developmental, or research work and with a nonprofit educational or research institution, or (b) only for management and operation of a Government-owned plant, subparagraph (a)(5) should not be included. If the advance payment is to be made without interest to the contractor, include subparagraph (a)(6), (7), or (8). If any advance payments have previously been authorized for the contract, include the final sentence of paragraph (c). The alternate parenthetical wording or other

modifications may be used as appropriate. The paragraphs actually used shall be renumbered sequentially].

32.411 Agreement for special bank account.

The contracting officer shall use substantially the following form of agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT

This agreement is entered into this day of, 19.., between the United States of America, (the Government), represented by the Contracting Officer executing this agreement, ... *[Insert the name of the contractor]*, a *[Insert the name of the State of incorporation]* corporation (the Contractor), and, a banking corporation under the laws of, located at (the Bank).

RECITALS

(a) Under date of, 19.., the Government and the Contractor entered into Contract No., or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the Bank.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Bank Account at a member bank of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811). The parties agree to deposit the amounts with the Bank, which meets the requirement.

(c) This Special Bank Account is designated "..... *[Insert the contractor's name]*, ... *[Insert the name of the Government agency]* Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the Bank regarding the account.

(b) The Bank is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Bank Account, but is not responsible for the application of funds withdrawn from the account. The Bank shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The Bank is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the Bank through the Contracting Officer on *[Insert the name of the agency]* stationery and purporting to be signed by, or by the direction of or duly authorized representa-

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tive, shall be, as far as the rights, duties, and liabilities of the Bank are concerned, considered as being properly issued and filed with the Bank by the[Insert the name of the agency].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank regarding the Special Bank Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The Bank shall preserve the books and records for a period of 6 years after the closing of this Special Bank Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Bank Account, the Bank will promptly notify[Insert the name of the administering office].

(e) While this Special Bank Account exists, the Bank shall inform the Government each month of the Bank's published prime interest rate and changes to the rate during the month. The Bank shall give this information to the Contracting Officer on the last business day of the month. [This covenant will not be included in Special Bank Account Agreements covering interest-free advance payments].

Each of the parties to this agreement has executed the agreement on, 19...

[Signatures and official titles]

32.412 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-12, Advance Payments, in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b).

(b) If the agency desires to waive the countersignature requirement because of the contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, the contracting officer shall use the clause with its Alternate I.

(c) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the agency considers a more rapid liquidation appropriate, the contracting officer shall use the clause with its Alternate III.

(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its Alternate IV.

(f) If the requirement for a special bank account is eliminated in accordance with 32.409-3(e) or (g), the contracting officer shall insert in the solicitation or contract a clause substantially the same as the one at 52.232-12, Advance Payments, omitting the terms pertaining to a special bank account.

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SUBPART 32.5—PROGRESS PAYMENTS BASED ON COSTS

32.500 Scope of subpart.

This subpart prescribes policies, procedures, forms, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts, other than reimbursement of the contractor's progress payments to subcontractors and suppliers (see 32.504(f)); or

(b) Contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion.

32.501 General.

Progress payments may be customary or unusual. Customary progress payments are those made under the general guidance in this subpart, using the customary progress payment rate, the cost base, and frequency of payment established in the Progress Payments clause, and either the ordinary liquidation method or the alternate method as provided in subsections 32.503-8 and 32.503-9. Any other progress payments are considered unusual, and may be used only in exceptional cases when authorized in accordance with subsection 32.501-2.

32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent. The Department of Defense (DOD) may establish other customary rates for foreign military sales and for flexible progress payments.

(b) Any rate higher than those permitted in paragraph (a) above shall be considered an unusual progress payment. The contracting officer shall not include a higher rate in a contract unless advance agency approval is obtained as prescribed in 32.501-2.

(c) When advance payments and progress payments are authorized under the same contract, a progress payment rate higher than the customary rate shall not be authorized.

(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145) and, for civilian agencies, as a matter of policy, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or flexible progress payments for the undefinitized actions.

32.501-2 Unusual progress payments.

(a) The contracting officer may provide unusual progress payments only if—

(1) The contract necessitates predelivery expenditures that are large in relation to contract price and in relation to the contractor's working capital and credit;

(2) The contractor fully documents an actual need to supplement any private financing available, including guaranteed loans; and

(3) The contractor's request is approved by the head of the contracting activity or a designee. In addition, see 32.502-2.

(b) The excess of the unusual progress payment rate approved over the customary progress payment rate should be the lowest amount possible under the circumstances.

(c) Progress payments will not be considered unusual merely because they are on letter contracts or the definitive contracts that supersede letter contracts.

32.501-3 Contract price.

(a) For the purpose of making progress payments and determining the limitation on progress payments, the contract price shall be as follows:

(1) Under firm-fixed-price contracts, the contract price is the current contract price plus any unpriced modifications for which funds have been obligated.

(2) If the contract is redeterminable or subject to economic price adjustment, the contract price is the initial price until modified.

(3) Under a fixed-price incentive contract, the contract price is the target price plus any unpriced modifications for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the contracting officer may provisionally increase the price up to the ceiling or maximum price.

(4) Under a letter contract, the contract price is the maximum amount obligated by the contract as modified.

(5) Under an unpriced order issued against a basic ordering agreement, the contract price is the maximum amount obligated by the order, as modified.

(6) Any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.

(b) The contracting officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.

32.501-4 Consideration for progress payments.

(a) There is no requirement for a separate consideration for providing progress payments or changing progress payment or liquidation rates, if coverage is included in the terms of the contract when awarded.

(b) Occasionally, unanticipated circumstances arise during contract performance which, under the policies of this subpart, result in the contract being amended to provide progress payments. In such a case, adequate new consideration is required.

(c) The contractor may provide the new consideration by monetary or nonmonetary means. A monetary consideration could be a reduction in the contract price. A nonmonetary consideration could be the incorporation of terms in the contract modification giving the Government a new

and substantial benefit.

(d) The fair and reasonable consideration should approximate as nearly as practicably ascertainable the amount by which the price would have been smaller had the Progress Payments clause been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of unliquidated progress payments at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(e) The contracting officer shall not provide for any other type of specific charges, such as interest, for progress payments.

32.501-5 Other protective terms.

If the contracting officer considers it necessary for protection of the Government's interest, protective terms such as the following may be used in addition to the Progress Payments clause of the contract:

(a) Personal or corporate guarantees.

(b) Subordinations or standbys of indebtedness.

(c) Special bank accounts.

(d) Protective covenants of the kinds in paragraph (p) of the clause at 52.232-12, Advance Payments.

32.502 Preaward matters.

This section covers matters that generally are relevant only before contract award. This does not preclude taking actions discussed here after award, if appropriate; e.g., postaward addition of a Progress Payments clause for consideration.

32.502-1 Use of customary progress payments.

The use of a Progress Payments clause in solicitations and resulting contracts generally shall be based upon considerations of the criteria in this subsection. Reasonable doubts should be resolved in favor of including the Progress Payments clause in the solicitation. Bids conditioned on progress payments when the solicitation did not provide for progress payments shall be rejected as nonresponsive.

(a) Subject to paragraphs (b) and (c) below, the contracting officer may provide for customary progress payments if the contractor (1) will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work must begin (normally 4 months or more for small business concerns; 6 months or more for others), and (2) will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital. Progress payments may also be authorized, particularly for small suppliers, if

the contractor demonstrates actual financial need or the unavailability of private financing (see 32.106(a)).

(b) To reduce undue administrative effort and expense, the contracting officer generally should not provide for progress payments on contracts of less than \$1,000,000 unless—

(1) The contractor is a small business concern and the contract will involve approximately \$100,000 or more; or

(2) The contractor will perform a group of small contracts at the same time and the total impact on working capital is equivalent to a single contract of \$1,000,000 or more.

(c) The contracting officer shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice. Examples of items customarily not subject to progress payments include (1) subsistence, (2) clothing, (3) medical and dental supplies, and (4) standard commercial items not requiring a substantial accumulation of predelivery expenditures by the contractor.

(d) (1) In considering whether to provide for progress payments in circumstances under which a series of orders are awarded (e.g., indefinite delivery contracts or basic ordering agreements contemplating requisitions, task orders, etc., or their equivalent), the contracting officer shall apply the standards in paragraphs (a) through (c) above, based on—

(i) An estimate of the total work to be done; and

(ii) The probable impact on working capital of the predelivery expenditures and production lead times of the majority of the individual orders.

(2) In authorizing progress payments under multiple-order contracts, the contracting officer should establish a single liquidation rate applicable to all orders.

32.502-2 Contract finance office clearance.

The contracting officer shall obtain the approval of the contract finance office or other offices designated under agency procedures before taking any of the following actions:

(a) Providing a progress payment rate higher than the customary rate (see 32.501-1).

(b) Deviating from the progress payments terms prescribed in this part.

(c) Providing progress payments to a contractor—

(1) Whose financial condition is in doubt;

(2) Who has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; or

(3) Who is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

32.502-3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.232-13, Notice of Progress Payments, in invitations for bids and requests for proposals that include a Progress payments clause.

(b) (1) Under the authority of the statutes cited in 32.101,

an invitation for bids may restrict the availability of progress payments to small business concerns only.

(2) The contracting officer shall insert the provision at 52.232-14, Notice of Availability of Progress Payments Exclusively for Small Business Concerns, in invitations for bids if it is anticipated that (1) both small business concerns and others may submit bids in response to the same invitation and (2) only the small business bidders would need progress payments.

(c) The contracting officer shall insert the provision at 52.232-15, Progress Payments Not Included, in invitations for bids if the solicitation will not contain one of the provisions prescribed in paragraphs (a) and (b) above.

32.502-4 Contract clauses.

(a) The contracting officer shall insert the clause at 52.232-16, Progress Payments, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

(b) If the contractor is a small business concern, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a letter contract, the contracting officer shall use the clause with its Alternate II.

(d) If the nature of the contract necessitates separate progress payment rates for portions of work that are clearly severable and accounting segregation would be maintained (e.g., annual production requirements), the application of separate progress payment rates shall be fully described in a supplementary special provision within the contract. Separate progress payment requests and subsequent invoices shall be submitted by the contractor for the severable portions of work in order to maintain accounting integrity.

32.503 Postaward matters.

This section covers matters that are generally relevant only after award of a contract. This does not preclude taking actions discussed here before award, if appropriate; e.g., preaward review of accounting systems and controls.

32.503-1 Contractor requests.

Each contractor request for progress payment shall—

(a) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment;

(b) Comply with the instructions on the reverse of the applicable form, and the contract terms; and

(c) Include any additional information reasonably requested by the contracting officer.

32.503-2 Supervision of progress payments.

(a) The extent of progress payments supervision, by prepayment review or periodic review, should vary inversely with the contractor's experience, performance record, reliability, quality of management, and financial strength, and with the adequacy of the contractor's accounting system and controls. Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect Government interests.

(b) The administering office must keep itself informed of the contractor's overall operations and finan-

(iii) The amount of work remaining to be done and the estimated costs of completion of performance; and

(iv) The amount remaining unpaid under the contract.

(g) *Loss contracts.* (1) If the sum of the total costs incurred under a contract plus the estimated costs to complete the performance are likely to exceed the contract price, the contracting officer shall compute a loss ratio factor and adjust future progress payments to exclude the element of loss. The loss ratio factor is computed as follows:

(i) Revise the current contract price used in progress payment computations (the current ceiling price under fixed-price incentive contracts) to include any pending change orders and unpriced orders to the extent funds for the orders have been obligated.

(ii) Divide the revised contract price by the sum of the total costs incurred to date plus the estimated additional costs of completing the contract performance.

(2) If the contracting officer believes a loss is probable, future progress payment requests shall be modified as follows:

(i) The contract price shall be the revised amount computed under subparagraph (1)(i) above.

(ii) The total costs eligible for progress payments shall be the product of (A) the sum of paid costs eligible for progress payments times (B) the loss ratio factor computed under subparagraph (1)(ii) above.

(iii) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(3) The contracting officer may use audit assistance, technical services, management reports, and other sources of pertinent data to evaluate progress payment requests. If the contracting officer concludes that the contractor's figures in the contractor's progress payment request are not correct, the contracting officer shall—

(i) In the manner prescribed in paragraph (4) below, prepare a supplementary analysis to be attached to the contractor's request;

(ii) Advise the contractor in writing of the differences; and

(iii) Adjust all further progress payments in accordance with paragraph (1) above, using the contracting officer's figures, until the difference is resolved.

(4) The following is an example of the supplementary analysis required in paragraph (3) above:

Section I:

Contract price	\$950,000
Change orders and unpriced orders (to extent funds have been obligated)	50,000
Revised contract price	<u>\$1,000,000</u>

Section II:

Total costs incurred to date	\$1,080,000
Estimated additional costs to complete	120,000
Total costs to complete	<u>\$1,200,000</u>

$$\text{Loss ratio factor} = \frac{\$1,000,000}{\$1,200,000} = 83.3\%$$

Total costs eligible for progress payments	\$900,000
Loss ratio factor	x 83.3%
Recognized costs for progress payments	\$749,700
Progress payment rate	x 80.0%
Alternate amount to be used	\$599,760
Section III:	
Factored costs of items delivered*	\$250,000
Recognized costs applicable to undelivered items (\$749,700—\$250,000)	\$499,700

* This amount shall be the same as the contract price of the items delivered.

32.503-7 Limitation on general and administrative expenses (G&A) for progress payments.

If the contractor established an inventory suspense account under Appendix A of Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (4 CFR Part 410), and the account is \$5 million or more, the following limitations shall apply to progress payments:

(a) G&A shall not be eligible for progress payments until the value of work in process inventories under new contracts exceeds that under the old. For this purpose, new contracts shall be considered to be those awarded after CAS 410 became applicable to the work of the contractor. Old contracts are those included in the suspense account prescribed in CAS 410.

(b) The amount of G&A eligible for progress payments under the contract shall be the contractor's pro rata share of G&A allocable to the excess under paragraph (a) above.

32.503-8 Liquidation rates—ordinary method.

Progress payments are recouped by the Government through the deduction of liquidations from payments that would otherwise be due to the contractor for completed contract items. To determine the amount of the liquidation, a liquidation rate is applied to the contract price of contract items delivered and accepted. The ordinary method is that the liquidation rate is the same as the progress payment rate; at the beginning of a contract, only this method may be used. If the contract is subject to the CAS limitation in 32.503-7 on G&A eligible for progress payments, the ordinary method includes the use of an adjusted liquidation rate to reflect the applicable G&A suspense account. The adjusted liquidation rate shall be established by (a) dividing the unbilled G&A by the contract price, (b)

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multiplying the quotient by the progress payment rate stated in the contract, and (c) subtracting the resulting rate from the progress payment rate. For example, if the price is \$1,100,000 and the unbilled G&A is \$47,600, the adjusted liquidation rate would be 76.5 percent, computed as follows:

Unbilled G&A divided by contract price ($47,600/1,100,000$)	. 4.33%
Result x progress payment rate ($4.33\% \times 80\%$)	 3.46%
Result subtracted from progress payment rate ($80\% - 3.46\%$)	76.54%

32.503-9 Liquidation rates—alternate method.

(a) The liquidation rate determined under 32.503-8 shall apply throughout the period of contract performance unless the contracting officer adjusts the liquidation rate under the alternate method in this 32.503-9. The objective of the alternate liquidation rate method is to permit the contractor to retain the earned profit element of the contract prices for completed items in the liquidation process. The contracting officer may reduce the liquidation rate if—

- (1) The contractor requests a reduction in the rate;
- (2) The rate has not been reduced in the preceding 12 months;
- (3) The contract delivery schedule extends at least 18 months from the contract award date;
- (4) Data on actual costs are available (i) for the products delivered, or (ii) if no deliveries have been made, for a performance period of at least 12 months;
- (5) The reduced liquidation rate would result in the Government recouping under each invoice the full extent of the progress payments applicable to the costs allocable to that invoice;
- (6) The contractor would not be paid for more than the costs of items delivered and accepted (less allocable progress payments) and the earned profit on those items;
- (7) The unliquidated progress payments would not exceed the limit prescribed in paragraph (a)(4) of the Progress Payments clause;
- (8) The parties agree on an appropriate rate; and
- (9) The contractor agrees to certify annually, or more often if requested by the contracting officer, that the alternate rate continues to meet the conditions of subsections 5, 6, and 7 above. The certificate must be accompanied by adequate supporting information.

(b) The contracting officer shall change the liquidation rate in the following circumstances:

- (1) The rate shall be increased for both previous and subsequent transactions, if the contractor experiences a lower profit rate than the rate anticipated at the time the liquidation rate was associated with contract items already delivered, as well as subsequent progress payments.

(2) The rate shall be increased or decreased in keeping with the successive changes to the contract price or target profit when—

- (i) The target profit is changed under a fixed-price incentive contract with successive targets; or
- (ii) A redetermined price involves a change in the profit element under a contract with prospective price redetermination at stated intervals.

(c) Whenever the liquidation rate is changed, the contracting officer shall issue a contract modification to specify the new rate in the Progress Payments clause. Adequate consideration for these contract modifications is provided by the consideration included in the initial contract. The parties shall promptly make the payment or liquidation required in the circumstances.

32.503-10 Establishing alternate liquidation rates.

(a) The contracting officer shall ensure that the liquidation rate is—

- (1) High enough to result in Government recoupment of the applicable progress payments on each billing; and
- (2) Supported by documentation included in the administration office contract file.

(b) The minimum liquidation rate is the expected progress payments divided by the contract price. Each of these factors is discussed below:

- (1) Usually, the contracting officer shall compute the expected progress payments by multiplying the estimated cost of performing the contract by the progress payment rate. In certain cases, part of the contractor's G&A is excluded from the estimated cost for the purpose of calculating expected progress payments for the liquidation rate. These cases pertain to the implementation of CAS 410 (see 32.503-7 and 32.503-8).

(2) For purposes of computing the liquidation rate, the contracting officer may adjust the estimated cost and the contract price to include the estimated value of any work authorized but not yet priced and any projected economic adjustments; however, the contracting officer's adjustment shall not exceed the Government's estimate of the price of all authorized work or the funds obligated for the contract.

(3) The following are examples of the computation. Assuming an estimated price of \$1,100,000 and total estimated costs eligible for progress payments of \$1,000,000:

- (i) If the progress payment rate is 80 percent, the minimum liquidation rate should be 72.7 percent, computed as follows:

$$\frac{(\$1,000,000 \times 80\%)}{\$1,100,000} = 72.7\%$$

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(ii) If the progress payment rate is 85 percent, the minimum liquidation rate should be 77.3 percent, computed as follows:

$$\frac{(\$1,000,000 \times 85\%)}{\$1,100,000} = 77.3\%$$

(iii) If the contract is subject to CAS limitation on G&A eligible for progress payments (see 32.503-7), an adjusted alternate liquidation rate shall be established by subtracting the estimated G&A not eligible for progress payments from the total estimated contract costs. For example, if the price is \$1,100,000, costs are \$1,000,000, and unbilled G&A is \$47,600, the liquidation rate should be 69.3 percent, computed as follows:

$$\frac{\$1,000,000 - \$47,600}{\$1,100,000} \times 80\% = 69.3\%$$

(4) Minimum liquidation rates will generally be expressed tenths of a percent. Decimals between tenths will be rounded up to the next highest tenth (not necessarily the nearest tenth), since rounding down would produce a rate below the minimum rate calculated.

32.503-11 Adjustments for price reduction.

(a) If a retroactive downward price reduction occurs under a redeterminable contract that provides for progress payments, the contracting officer shall—

(1) Determine the refund due and obtain repayment from the contractor for the excess of payments made for delivered items over amounts due as recomputed at the reduced prices; and

(2) Increase the unliquidated progress payments amount for overdeductions made from the contractor's billings for items delivered.

(b) The contracting officer shall also increase the unliquidated progress payments amount if the contractor makes an interim or voluntary price reduction under a redeterminable or incentive contract.

32.503-12 Maximum unliquidated amount.

(a) The contracting officer shall ensure that any excess of the unliquidated progress payments over the contractual limitation in paragraph (a) of the Progress Payments clause in the contract is promptly corrected through one or more of the following actions:

- (1) Increasing the liquidation rate.
- (2) Reducing the progress payment rate.
- (3) Suspending progress payments.

(b) The excess described in paragraph (a) above is most likely to arise under the following circumstances:

- (1) The costs of performance exceed the contract price.
- (2) The alternate method of liquidation (see 32.503-9)

is used and the actual costs of performance exceed the cost estimates used to establish the liquidation rate.

(3) The rate of progress or the quality of contract performance is unsatisfactory.

(4) The rate of rejections, waste, or spoilage is excessive.

(c) As required, the services of the cognizant independent audit agency or office should be fully utilized, along with the services of qualified cost analysis and engineering personnel.

32.503-13 Quarterly statements for price revision contracts.

Under price revision or redeterminable contracts that include progress payments clauses, the contracting officer shall occasionally compare the quarterly statements submitted under the price revision or renegotiation clause at 52.216-5, 52.216-6, 52.216-16, or 52.216-17 with the contractor's requests for progress payments. The contracting officer should ensure, as far as is reasonably possible, that costs of delivered items in the quarterly statements are excluded from the costs of undelivered items (the basis for unliquidated progress payments) in the contractor's request for progress payments.

32.503-14 Protection of Government title.

(a) Since the Progress Payments clause gives the Government title to all of the materials, work-in-process, finished goods, and other items of property described in paragraph (d) of the Progress Payments clause, under the contract under which progress payments have been made, the ACO must ensure that the Government title to these inventories is not compromised by other encumbrances. Ordinarily, the ACO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the progress payment request.

(b) If the ACO becomes aware of any arrangement or condition that would impair the Government's title to the property affected by progress payment, the ACO shall require additional protective provisions (see 32.501-5) to establish and protect the Government's title.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the ACO may, if necessary, suspend or reduce progress payments under the terms of the Progress Payments clause covering failure to comply with any material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the progress payments certification, the ACO should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.503-15 Application of Government title terms.

(a) Property to which the Government obtains title by operation of the Progress Payments clause solely is not, as a consequence, Government-furnished property.

(b) Although property title is vested in the Government under the Progress Payments clause, the acquisition, handling, and disposition of certain types of property are governed by other clauses, as follows:

(1) The clause at 52.245-17, Special Tooling, for special tooling.

(2) The termination clauses at 52.249, for termination inventory.

(c) The contractor may sell or otherwise dispose of current production scrap in the ordinary course of business on its own volition, even if title has vested in the Government under the Progress Payments clause. The contracting officer shall require the contractor to credit the costs of the contract performance with the proceeds of the scrap disposition.

(d) When the title to materials or other inventories is vested in the Government under the Progress Payments clause, the contractor may transfer the inventory items from the contract for its own use or other disposition only if, and on terms, approved by the contracting officer. The contractor shall (1) eliminate the costs allocable to the transferred property from the costs of contract performance, and (2) repay or credit to the Government an amount equal to the unliquidated progress payments, allocable to the transferred property.

(e) If excess property remains after the contract performance is complete and all contractor obligations under the contract are satisfied, including full liquidation of progress payments, the excess property is outside the scope of the Progress Payments clause. Therefore, the contractor holds title to it.

32.503-16 Risk of loss.

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to progress payments, default, and terminations do not constitute a Government assumption of this risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, the contractor is obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (c)(5) of the Progress Payments clause.

32.504 Subcontracts.

(a) The contracting officer shall encourage the contractor to provide progress payments to subcontractors on terms that meet the standards in 32.502-1 for customary progress payments.

(b) The contractor's requests for progress payments may include the full amount paid to subcontractors as progress payments under the contract and subcontracts.

(c) If the contractor is considering making unusual progress payments to a subcontractor, the parties shall be guided by the policies in 32.501-2. If unusual progress payments for the subcontract are approved by the Government, the contracting officers shall issue a contract modification to specify the new rate in subdivision (j)(4) of the Progress Payments clause in the prime contract. This will allow the contractor to include the progress payments to the subcontractor in the cost basis for progress payments by the Government. This modification shall not be considered a deviation and shall not require the clearance prescribed in 32.502-2(b).

(d) The contractor has a duty to ensure that progress payments to subcontractors conform to the standards and principles prescribed in paragraph (j) of the Progress Payments clause in the prime contract. Although the contracting officer should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract, there is no special requirement for contracting officer review or consent merely because the subcontract includes a progress payments clause except as provided in paragraph (c) above. However, the contracting officer shall ensure that the contractor has installed the necessary management control systems, including internal audit procedures.

(e) The subcontract terms shall include the substance of the Progress Payments clause in the prime contract, modified to indicate that the contractor, not the Government, awards the subcontract and administers the progress payments. The following exceptions apply to wording modifications:

(1) The subcontract terms on title to property under progress payments shall provide for vesting of title in the Government, not the contractor, as in paragraph (d) of the Progress Payments clause in the prime contract. A reference to the contractor may, however, be substituted for "Government" in subdivision (d)(2)(iv) of the clause.

(2) In the subcontract terms on reports and access to records, the contractor shall not delete the references to "Contracting Officer" and "Government" in adapting paragraph (g) of the Progress Payments clause in the contract, but may expand the terms as follows:

(i) The term "Contracting Officer" may be changed to "Contracting Officer or Prime Contractor."

(ii) The term "the Government" may be changed to "the Government or Prime Contractor."

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occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least—

(1) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;

(2) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;

(3) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(4) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(5) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;

(6) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and

(7) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(c) The contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Government property in its possession or control.

(d) The contractor shall keep records of maintenance actions performed and any deficiencies in the Government property discovered as a result of inspections.

45.509-2 Use of Government property.

(a) The contractor's procedures shall be in writing and adequate (1) to assure that Government property will be used only for those purposes authorized in the contract and that any required approvals will be obtained, and (2) to provide a basis for determining and allocating rental charges.

(b) With respect to plant equipment with an acquisition value of \$5,000 or more, the procedures, as a minimum, shall—

(1) Establish a minimum level of use below which an analysis of need shall be made and retention justified, except for inactive plants and equipment retained for mobilization (the use level may be established for individual items or families of items, depending upon circumstances of use);

(2) Provide for recording authorized and actual use consistent with the established use levels;

(3) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; and

(4) Provide for prompt reporting to the contracting officer of all plant equipment for which retention is not justified.

45.510 Property in possession of subcontractors.

The contractor shall require any of its subcontractors possessing or controlling Government property to adequately

care for and maintain that property and assure that it is used only as authorized by the contract. The contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.

45.511 Audit of property control system.

The Government may audit the contractor's property control system as frequently as conditions warrant. These audits may take place at any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor shall make all such records and related correspondence available to the auditors.

SUBPART 45.6—REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY**45.600 Scope of subpart.**

This subpart establishes policies and procedures for the reporting, redistribution, and disposal of Government property excess to contracts and of property that forms the basis of a claim against the Government (e.g., termination inventory under fixed-price contracts). This subpart does not apply to the disposal of real property or to property for which the Government has a lien or title solely as a result of advance or progress payments that have been liquidated.

45.601 Definitions.

"Common item," as used in this subpart, means material that is common to the applicable Government contract and the contractor's other work.

"Contractor-acquired property" (see 45.101).

"Contractor inventory," as used in this subpart, means—

(a) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(b) Any property that the Government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(c) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

"Government-furnished property" (see 45.101).

"Government property" (see 45.101).

"Line item," as used in this subpart, means a single line entry on a reporting form that indicates a quantity of property having the same description and condition code from any one contract at any one reporting location.

"Personal property," as used in this subpart, means property of any kind or interest in it except real prop-

erty, records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

"Plant clearance," as used in this subpart, means all actions relating to the screening, redistribution, and disposal of contractor inventory from a contractor's plant or work site. The term "contractor's plant" includes a contractor-operated Government facility.

"Plant clearance officer," as used in this subpart, means an authorized representative of the contracting officer assigned responsibility for plant clearance.

"Plant clearance period," as used in this subpart, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

"Plant equipment" (see 45.101).

"Precious metals," as used in this subpart, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals—platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Property administrator" (see 45.501).

"Public body" means any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

"Real property" (see 45.101).

"Reportable property," as used in this subpart, means contractor inventory that must be reported for screening in accordance with this subpart before disposition as surplus.

"Reporting activity," as used in this subpart, means the Government activity that initiates the Standard Form 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output).

"Salvage" (see 45.501).

"Scrap" (see 45.501).

"Screening completion date," as used in this subpart, means the date on which all screening required by this subpart is to be completed. It includes screening within the Government and the donation screening period.

"Serviceable or usable property," as used in this subpart, means property that has a reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.

"Special test equipment" (see 45.101).

"Special tooling" (see 45.101).

"Surplus property," as used in this subpart, means contractor inventory not required by any Federal agency.

"Surplus Release Date (SRD)," as used in this subpart,

means the date on which screening of personal property for Federal use is completed and the property is not needed for any Federal use. On that date, property becomes surplus and is eligible for donation.

"Termination inventory," as used in this subpart, means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

"Work-in-process" (see 45.501).

45.602 Reserved.

45.603 Disposal methods.

An agency may exercise its rights to require delivery of any contractor inventory. If the agency does not exercise these rights, the contractor inventory shall be disposed of by one of the following methods in the priority indicated:

(a) Purchase or retention at cost by prime contractor or subcontractor of contractor-acquired property (see 45.605-1).

(b) Return of contractor-acquired property to suppliers (see 45.605-2).

(c) Use within the Government through the use of prescribed screening procedures (see 45.608).

(d) Donation to eligible donees (see 45.609).

(e) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor) (see 45.610).

(f) Donation to public bodies in lieu of abandonment (see 45.611).

(g) Abandonment or destruction (see 45.611).

45.604 Restrictions on purchase or retention of contractor inventory.

A contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory is subject to any contract provisions and to applicable Government restrictions on the disposition of property that is classified for security reasons, possesses military offensive or defensive characteristics, or is dangerous to public health, safety, or welfare.

45.605 Contractor-acquired property.

45.605-1 Purchase or retention at cost.

(a) The plant clearance officer shall encourage contractors to purchase or retain contractor-acquired property at cost. However, the contractor shall not include any part of the cost of property purchased or retained in any claim for reimbursement against the Government. Under cost-reimbursement contracts, appropriate adjustments shall be made for previously reimbursed costs. When the property is for use on a continuing

the appropriate weight unit or in the percentage of total content.

(4) Enter in column c one of the following codes to indicate the condition of each item of material:

Code 1, Unused-good. Unused property that is usable without repairs and identical or interchangeable with new items from normal supply sources.

Code 2, Unused-fair. Unused property that is usable without repairs, but is deteriorated or damaged to the extent that utility is somewhat impaired.

Code 3, Unused-poor. Unused property that is usable without repairs, but is considerably deteriorated or damaged. Enough utility remains to classify the property better than salvage.

Code 4, Used-good. Used property that is usable without repairs and most of its useful life remains.

Code 5, Used-fair. Used property that is usable without repairs, but is somewhat worn or deteriorated and may soon require repairs.

Code 6, Used-poor. Used property that may be used without repairs, but is considerably worn or deteriorated to the degree that remaining utility is limited or major repairs will soon be required.

Code 7, Repairs required-good. Required repairs are minor and should not exceed 15 percent of original acquisition cost.

Code 8, Repairs required-fair. Required repairs are considerable and are estimated to range from 16 percent to 40 percent of original acquisition cost.

Code 9, Repairs required-poor. Required repairs are major because property is badly damaged, worn, or deteriorated, and are estimated to range from 41 percent to 65 percent of original acquisition cost.

Code X, Salvage. Property has some value in excess of its basic material content, but repair or rehabilitation to use for the originally intended purpose is clearly impractical. Repair for any use would exceed 65 percent of the original acquisition cost.

Code S, Scrap. Material that has no value except for its basic material content.

(5) Enter in columns e and f the standard or invoiced cost of the material being reported. If such data are not available, enter the estimated cost, identified by the symbol "(e)".

(6) Enter after the amount of the contractor's offer in column g the letter "A" if a credit for acquisition has been authorized or approved by the plant clearance officer. Enter the letter "C" if the amount represents your offer to acquire the item. In either case, enter the quantity on a second line if it is less than the full quantity shown in column d.

(e) *Instructions for completing specific forms.* The following instructions are in addition to the general instructions

in paragraph (d) and the self-explanatory blocks on the inventory forms.

(1) *Inventory Schedule A (Metals in Mill Product Form) (SF 1426).*

(i) *Classification.* List each type of metal (such as aluminum or carbon steel) on a separate form, with the name or alloy shown in the Property Classification block. List like forms of the metal or alloy together in sequence. (For example, for carbon steel, group all the strip, followed by sheets, followed by the bar stock, etc.)

(ii) *Description.* Enter in column b the full commercial description and weight for all items. Identify the material specification entered in column b2 as either a Government specification or that of a particular industrial society or manufacturer. Complete columns b3, b4, and b5 to show the thickness, width, and length.

(2) *Inventory Schedule B (SF 1428).*

(i) *Classification.* Use a separate form for each classification. Enter the name of the classification in the Property Classification block. Items having no commercial value should be placed in a single classification designated "no commercial value." The term "raw materials (other than metals)" means material in primary form. Examples are plastics, textiles, lumber, and chemicals. Arrange items in sequence under separate subheadings. For example, under the classification "chemicals," group separately all acids, all alkalis, all resin, etc.

(ii) *Description.* In the inventory description for plant equipment (see 45.101 for definition), include the following as a minimum:

(A) Nomenclature or description of the item and Federal Supply Classification (see Cataloging Handbooks H2-1, H2-2, and H2-3).

(B) Federal Supply Code for Manufacturers (see Cataloging Handbooks H4-1 and H4-2) and, if available in the contractor's property control system, the name and address of the equipment manufacturer.

(C) Model/part number.

(3) *Inventory Schedule C (Work-in-Process) (SF 1430).*

(i) *Classification.* No classification of items is required. Do not list finished components on this form (use SF 1428).

(ii) *Description.* Enter in column b a description in sufficient detail to permit the Government to determine the appropriate disposition. Estimate percentage of completion for each line item.

(iii) *Condition* (column c). Generally, conditions X (salvage) or S (scrap) are applicable to work-in-process (see paragraph (d)(4) above).

(4) *Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).*

(i) *Classification.* Use a new form for each general classification of special tooling and special test equipment.

(ii) *Description.* Furnish a description which will enable the plant clearance officer or screener to determine the appropriate disposition, including the potential for reutilization. Include tool nomenclature, tool number, related product part number, and function which the tool performs. Designate special tooling usable for maintenance programs by placing the letter "M" in the left-hand column, "For Use of Contracting Agency Only." Provide the end-item application and a brief description of the test function for each unit of special test equipment.

(5) *Termination Inventory Schedule E (SF 1434).*

(i) *Classification.* No special classification is required, but similar items should be grouped together. Several classifications may be listed on one form.

(ii) *Description.* Enter in column b the full commercial description of all items which have commercial value. For other items, furnish a description in sufficient detail to permit the Government to determine the appropriate disposition.

45.607 Scrap.

45.607-1 General.

(a) The contractor need not itemize scrap on inventory schedules if (1) the material is physically segregated in the contractor's plant and (2) the contractor submits a statement describing the material, estimating its cost, and providing other information necessary for the plant clearance officer to verify whether the property is scrap. The contractor shall sort the scrap to the extent economically feasible to assure the highest sale proceeds.

(b) The plant clearance officer shall review the schedules of property reported as scrap and, if necessary, physically inspect the property involved. If the plant clearance officer determines that any of the property is serviceable, usable, or salvable, the contractor shall resubmit it on appropriate inventory schedules.

45.607-2 Recovering precious metals.

(a) GSA is responsible for initiating the Government-wide precious metals recovery program (see FPMR 101-42.3 for procedures and requirements in recovering precious metals).

(b) Agencies shall assure that contractors generating contractor inventory containing precious metal-bearing scrap identify and promptly report such items. Agencies are also responsible for establishing and maintaining a program for

recovering precious metals. Agencies having no recovery and disposal facility available may request information or recovery assistance from the GSA regional office serving the area or the DOD Precious Metals Recovery Program Manager, Attention DLA-SIP, Cameron Station, Alexandria, VA 22314.

(c) Precious metals shall be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers shall not be used.) Grindings or sweepings shall not be packaged in paper or wooden containers, because loss occurs by adhesion to the containers. Containers shall be marked to show the type of precious metals.

(d) The shipping document shall indicate the net weight of each item to the nearest ounce (troy or almost economical means available, consistent with adequate safeguards to prevent loss or theft).

45.608 Screening of contractor inventory.

45.608-1 General.

(a) Serviceable or usable property included in the contractor's inventory schedules that is not purchased or retained by the prime contractor or subcontractor or returned to suppliers shall be screened for use by Government agencies before disposition by donation or sale. Agencies shall assure the widespread dissemination of information concerning the availability of contractor inventory.

(b) There are four categories of screening: standard, agency, limited, and special items. The plant clearance officer shall determine the categories of screening required, initiate prescribed screening, and assure accomplishment of transfer and donation.

Table 45-1 lists the type of property and screening period for each of these categories. When circumstances warrant, the plant clearance officer may extend the period for agency screening or arrange for more extensive screening than that prescribed. In the event of a conflict between Table 45-1 and a specific contract requirement, items shall be screened as provided by the contract.

Table 45-1
Screening Requirements by Type of Property

Screening Categories	Type of Property	Period
Standard	Line items in excess of \$500	90 days/(see 45.608-2)
Agency	Special tooling, perishables, property bearing a security classification, property dangerous to public health and safety, regardless of acquisition cost, and agency-peculiar property.	30 days/(See 45.608-3)

ment performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost-comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remaining the more economical alternative after (i) completion of a public review period of [insert a numeral from 5 to 15, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost-comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of [insert a numeral from 5 to 15, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) The Government will not make a final determination either for contract or Government performance during the public review period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the agency appeals procedure. This review will be completed within 30 days after the Contracting Officer receives the requests. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's Late Submissions, Modifications, and Withdrawal of Proposals

or Quotations provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

(R 7-2003.89(b) 1980 MAY)

52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause:
RIGHT OF FIRST REFUSAL OF EMPLOYMENT

(APR 1984)

The Contractor shall give Government employees displaced as a result of the conversion to contract performance the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(End of clause)

(R 7-104.104 1980 MAY)

52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:
ECONOMIC PURCHASE QUANTITY—SUPPLIES

(AUG 1987)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.

(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

OFFEROR RECOMMENDATIONS

ITEM	PRICE		TOTAL
	QUANTITY	QUOTATION	

(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in de-

veloping a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired.

(End of provision)

52.208-1 Required Sources for Jewel Bearings and Related Items.

As prescribed in 8.203-1(a), insert the following clause in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in 8.203-1(b), except as provided in 8.203-1(a)(1) through (3):

REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS (APR 1984)

(a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.

(b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources.

52-10

Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify the contract administration office cognizant of this contract promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

(End of clause)

(R 7-104.37 1977 NOV)

(R 1-1.319(e))

52.208-2 Jewel Bearings and Related Items Certificate.

As prescribed in 8.203-1(c), insert the following provision in solicitations that contain the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, except those for research and development:

JEWEL BEARINGS AND RELATED ITEMS CERTIFICATE (APR 1984)

(a) This is to certify that—

(1) Jewel bearings and/or related items, as defined in the Required Sources for Jewel Bearings and Related Items clause, will be incorporated into one or more items/will not be incorporated into any item [delete one] covered by this offer;

(2) Any jewel bearings required (or an equal quantity of the same type, size, and tolerances) will be ordered from the William Langer Plant, Rolla, North Dakota 58367, as provided in the Required Sources for Jewel Bearings and Related Items clause; and

recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgement and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(End of provision)

(R 7-2003.79 1978 JUN)

52.223-1 Clean Air and Water Certification.

As prescribed in 23.105(a), insert the following provision in solicitations containing the clause at 52.223-2, Clean Air and Water.

CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that—

(a) Any facility to be used in the performance of this proposed contract is ☐ is not ☐ listed on the Environmental Protection Agency List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(End of provision)

(AV 7-2003.71 1977 JUN)

(AV 1-1.2302-1)

52.223-2 Clean Air and Water.

As prescribed in 23.105(b), insert the following clause in solicitations and contracts to which Subpart 23.1 applies (see 23.101) if (a) the contract is expected to exceed \$100,000; (b) the contracting officer believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or (c) a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and (d) the acquisition is not otherwise exempt under 23.104.

CLEAN AIR AND WATER (APR 1984)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this clause, means—

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation plan as described in section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with—

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency determines that independent facilities are collocated in one geographical area.

52.223-3

FEDERAL ACQUISITION REGULATION (FAR)

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees—

(1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

(R 7-103.29 1975 OCT)

(R 1-1.2302)

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:
HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (AUG 1987)

(a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material 5 days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.

(b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.

(c) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(d) The Contractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(e) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.

(3) That the Government is not precluded from using similar or identical data acquired from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies—

"This is furnished under United States Government Contract No. and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of This legend shall be marked on any reproduction of this data."

(End of legend)

(5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-14, Rights in Data.

(f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

(End of clause)

52.223-4 Recovered Material Certifications.

As prescribed in 23.405, insert the following provision in solicitations that incorporate specifications requiring the use of recovered materials.

RECOVERED MATERIAL CERTIFICATION (APR 1984)

The offeror certifies, by signing this offer, that recovered materials, as defined in section 23.402 of the

relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to Part 331 is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in 331.50 of the CASB's regulations shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of \$100,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause by reason of 331.40(b) of the CASB's regulations.

(End of clause)

52.230-6 Consistency in Cost Accounting Practices.

As prescribed in 30.303-2(d), insert the following clause in negotiated defense contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 30.301(b)(12)):

CONSISTENCY IN COST ACCOUNTING PRACTICES (APR 1984)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB-DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with payment of interest, if such failure results in increased costs paid by the U.S. Government. Interest shall be determined in accordance with the rules and regulations of the Cost Accounting Standards Board. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by representatives of the contracting agency, the Cost Accounting Standards Board, and the Comptroller General of the United States.

(End of clause)

(V 4 CFR 331.30(b)(8))

52.231 Reserved.

52.232-1 Payments.

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price contract, a fixed-price service contract, or a contract for nonregulated communication ser-

vices is contemplated:

PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of clause)

(R 7-103.7 1958 JAN)

(R 1-7.102-7)

52.232-2 Payments under Fixed-Price Research and Development Contracts.

As prescribed in 32.111(a)(2), insert the following clause, as appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price research and development contract is contemplated:

PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

(R 7-302.2 1959 JUN)

(R 1-7.302-2)

52.232-3 Payments under Personal Services Contracts.

As prescribed in 32.111(a)(3), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for personal services:

PAYMENTS UNDER PERSONAL SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements for in this contract. The Government shall also pay the Contractor (a) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101-7) as authorized in

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appropriate Travel Orders; and (b) any other transportation expenses if provided for in the Schedule.

(End of clause)

(R 7-503.2 1958 JAN)

52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.

As prescribed in 32.111(a)(4), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for transportation or transportation-related services:

PAYMENTS UNDER TRANSPORTATION CONTRACTS AND TRANSPORTATION-RELATED SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor upon the submission of properly certified invoices or vouchers, the amount due for services rendered and accepted, less deductions, if any, as herein provided.

(End of clause)

(R 7-103.7 1958 JAN)

(R1-7.703-5)

52.232-5 Payments under Fixed-Price Construction Contracts.

As prescribed in 32.111(a)(5), insert the following clause:
PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (AUG 1987)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if--

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers ade-

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FEDERAL ACQUISITION REGULATION (FAR)

quate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(f) The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(g) Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

52.232-6 Payment under Communication Service Contracts with Common Carriers.

As prescribed in 32.111(a)(6), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of

regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (b)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; *provided*, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(AV 7-901.6 1972 MAY)

Alternate II (JAN 1986). If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the Contracting Officer may add the following paragraph (h) to the basic clause:

(h) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

52.232-8 Discounts for Prompt Payment.

As prescribed in 32.111(c)(1), insert the following clause:
DISCOUNTS FOR PROMPT PAYMENT (JUL 1985)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date a proper invoice or voucher is received in the office specified by the Government, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which a wire transfer was made.

(End of clause)

52.232-9 Limitation on Withholding of Payments.

As prescribed in 32.111(c)(2), insert a clause substantially as follows, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a supply contract, service contract, time-and-materials contract, labor-hour contract, or research and development contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to—

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

(R 7-104.21 1958 SEP)

(R 7-403.12 1959 FEB)

52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.111(d)(1), insert the following clause:
PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (AUG 1987)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract which meet the standards of quality established under this contract.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. If the Government exercises the option under the Option for Supervision and Inspection Services clause, progress payments as provided for in (a) and (b) above will be made for this portion of the con-

tract work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

52.232-11 Extras.

As prescribed in 32.111(d)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or transportation contract is contemplated.

EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

(V 7-103.3 1949 JUL)

(V 1-7.102-3)

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b):

ADVANCE PAYMENTS (APR 1984)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by the administering office, ... [Insert the name of the office designated under agency procedures], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed \$..... If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Special bank account.* Until (1) the Contractor has

liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor's special bank account with the [Insert the name of the bank]. None of the funds in the special bank account shall be mingled with other funds of the Contractor. Withdrawals from the special bank account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

(c) *Use of funds.* The Contractor may withdraw funds from the special bank account only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Other withdrawals require approval in writing by the administering office. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation.

(d) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) above. If the Contractor fails to repay the amount requested by the administering office, all or any part of the unliquidated advance payments may be withdrawn from the special bank account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract.

(e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of \$, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed \$..... [Insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(R 7-2003.63 APR 74)
(R 1-30.504-4(c))

52.232-15 Progress Payments Not Included.

As prescribed in 32.502-3(c), insert the following provision in invitations for bids if the solicitation will not contain one of the provisions prescribed in 32.502-3(a) and (b): PROGRESS PAYMENTS NOT INCLUDED (APR 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

(End of provision)
(R E-504.5 JULY 1976)
(R 1-30.504-6)

52.232-16 Progress Payments.

(a) As prescribed in 32.502-4(a), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with 32.501-1 for the progress payment and liquidation rate indicated.

(b) If an unusual progress payment rate is approved for the prime contractor (see 32.501-2), the rate approved shall be substituted for the customary rate in paragraph (a)(1).

(c) If the liquidation rate is changed from the customary progress payment rate (see 32.503-8 and 32.503-9), the new rate shall be substituted for the rate in paragraphs (a)(4), (a)(5), and (b).

(d) If advance and progress payments are authorized in the same contract, the words "less any unliquidated advance payments" may be deleted from paragraph (a)(4) of this clause.

(e) If an unusual progress payment rate is approved for a subcontract (see 32.504(b) and 32.501-2), subparagraph (j)(4) shall be modified to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

PROGRESS PAYMENTS (AUG 1987)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 80 percent of the Contractor's cumulative total costs under this contract, as shown by records maintained by the Contractor for the purpose of obtaining pay-

ment under Government contracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) The following conditions apply to the timing of including costs in progress payment requests:

(i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(ii) Costs for the following may be included when incurred, even if before payment, when the Contractor is not delinquent in payment of the costs of contract performance in the ordinary course of business:

(A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.

(B) Direct labor, direct travel, and other direct in-house costs.

(C) Properly allocable and allowable indirect costs.

(iii) Accrued costs of Contractor contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

(A) The Contractor's practice is to contribute to the plans quarterly or more frequently; and

(B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(iv) If the contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than—

(A) Five million dollars; or

(B) The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this contract).

(3) The Contractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.
 (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(5) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these acquisitions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title.* (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments

allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and access to records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of rights.* (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this

clause or the exercise of any other right, power, or privilege of the Government.

(j) *Progress payments to subcontractors.* The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Contractor has approved for current payment in the ordinary course of business.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, 4 months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of the clause at 52.232-16, Progress Payments, for any subcontractor that is a large business concern, or that clause with its *Alternate 1* for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Agency, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had transferred to the Contractor.

(7) The Contractor shall pay the subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving the Government progress payment covering those amounts.

(8) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on Unfinalized Contract Actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under unfinalized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is finalized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for unfinalized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the unfinalized contract action as long as the contract action remains unfinalized. The amount of unliquidated progress payments for unfinalized contract actions shall not exceed 80 percent of the maximum liability of the Government under the unfinalized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(End of clause)

Alternate I (AUG 1987). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see 32.501-1), delete subparagraphs (a)(1) and (a)(2) from the basic clause, and substitute the following subparagraphs (a)(1) and (a)(2):

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 85 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments

made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

Alternate II (AUG 1987). If the contract is a letter contract, add paragraphs (l) and (m). The amount specified in paragraph (m) shall not exceed 80 percent applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b) of this clause, be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unexpired portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (l)(1) and (l)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed (specify dollar amount).

52.232-17 Interest.

As prescribed in 32.617(a), insert the following clause in solicitations and contracts unless it is contemplated that the contract will be in one or more of the categories specified in 32.617(a)(1) through 32.617(a)(7). As prescribed in 32.617(b), the following clause may be inserted in solicitations and contracts when it is contemplated that the con-

tract will be in any of the categories specified in 32.617(a)(1) through 32.617(a)(7):

INTEREST (APR 1984)

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall

be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.

signee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)
(R 7-104.85(a) 1977 DEC)

52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404-2(b), insert the following clause in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

F.O.B.—GOVERNMENT BILLS OF LADING OR INDICIA MAIL (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are available, via the U.S. Postal System, using "Postage and Fees Paid" indicia labels.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)
(R 7-104.85(b) 1973 APR)

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause in solicitations and contracts when carload or truckload shipments will be made to DOD installations or, as required, civilian agency facilities:

REPORT OF SHIPMENT (REPSHIP) (APR 1984)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic (i.e., within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within Alaska or Hawaii, respectively) destination (other than a port for export). The notice shall be transmitted by rapid means (electrical if necessary) to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. When the length of time in transit will permit other than electrical means of transmission to provide the information 24 hours before the arrival of the shipment, the Government bill of lading, commercial bill

of lading, or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer via United States mail. This document shall be prominently identified by the Contractor as being a "Report of Shipment" or "REPSHIP FOR T.O."

Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS
COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA
XX-YY*

IN CAR NO. XX 123456**-GBL***-C98000031****
CONTRACT DLA ETA*****JUNE 5 JONES &
CO., JERSEY CITY, N.J.

* Name of rail carrier, trucker, or other carrier.

** Vehicle identification.

*** Government bill of lading.

**** If not shipped by GBL, identify lading document and state whether paid by contractor.

***** Estimated time of arrival.

(End of clause)
(AV 7-105.4 1968 JUNE)

52.243-1 Changes—Fixed-Price.

As prescribed in 43.205(a)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—FIXED-PRICE (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the

Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(c) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Alternate I (APR 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(R 7-1902.2 1971 NOV)

Alternate II (APR 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government, in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(R 7-1902.2 1971 NOV)

(R 7-103.2 1958 JAN)

(R 1-7.102-2)

Alternate III (APR 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

(R 7-607.3 1972 APR)

Alternate IV (APR 1984). If the requirement is for

transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Specifications.
- (2) Work or services.
- (3) Place of origin.
- (4) Place of delivery.
- (5) Tonnage to be shipped.
- (6) Amount of Government-furnished property.

(R 1-7.703-2)

Alternate V (APR 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following subparagraphs (a) (1) and (a)(3) and paragraph (b) for subparagraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:

- (1) Drawings, designs, or specifications.
- (3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or item required for, performing this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in (1) the contract price, the time of performance, or both; and (2) other affected terms of the contract, and shall modify the contract accordingly.

(R 7-304.1 1965 JUN)

(R 1-7.304-1)

52.243-2 Changes—Cost-Reimbursement.

As prescribed in 43.205(b)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—COST-REIMBURSEMENT (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion

schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

(End of clause)

Alternate I (APR 1984). If the requirement is for services and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(R 7-1909.2 1971 NOV)

Alternate II (APR 1984). If the requirement is for services and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(R 7-1909.2 1971 NOV)

(R 7-103.2 1958 JAN)

(R 1-7.102-2)

Alternate III (APR 1984). If the requirement is for construction, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the plans and specifications or instructions incorporated in the contract.

(R 7-605.2 1967 APR)

Alternate IV (APR 1984). If a facilities contract is contemplated, substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the facilities or work described in the schedule.

(e) Any related contract with the Contractor may be equitably adjusted if it provides for adjustment and is affected by a change ordered under this clause.

(R 7-702.4 1964 SEP)

Alternate V (APR 1984). If the requirement is for research and development, and it is desired to include the clause, substitute the following subparagraphs (a)(1) and (a)(3) for subparagraphs (a)(1) and (a)(3) of the basic clause:

- (1) Drawings, designs, or specifications.
- (3) Place of inspection, delivery, or acceptance.

(R 7-404.1 1967 APR)

(R 1-7.404-5)

52.243-3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause. |
The 30-day period may be varied according to agency procedures.

CHANGES—TIME-AND-MATERIALS OR LABOR-HOURS (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.
- (4) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this

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contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) other affected terms, and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

52.243-4 Changes.

As prescribed in 43.205(d), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; *provided*, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this

contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

52.243-5 Changes and Changed Conditions.

As prescribed in 43.205(e), insert the following clause in solicitations and contracts for construction, when the contract amount is not expected to exceed the applicable small purchase limitation in Part 13:

CHANGES AND CHANGED CONDITIONS (APR 1984)

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the Contractor before final payment under the contract.

(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless—

- (1) The Contractor has submitted and the Contracting Officer has received the required written notice; or

may be used for contracts of \$10,000 or less for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in 36.701(c).

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) *SF 252 (REV. 10/83), Architect-Engineer Contract*. SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) *SF 254 (REV. 10/83), Architect-Engineer and Related Services Questionnaire*. SF 254 is prescribed for use to obtain information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1). Pending issuance of a new edition of the form, the definition "Architect-engineer and related services" is replaced by the following:

"Architect-Engineer Services" means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

(c) *SF 255 (REV. 10/83), Architect-Engineer and Related Services Questionnaire for Specific Project*. SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254 regarding the prospective firm's qualifications for a particular architect-engineer project. Pending issuance of a new edition of the form, the definition "Architect-engineer and related services" is replaced by the following:

"Architect-Engineer Services" means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent locally require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logical-

ly or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

(d) *SF 1421 (10/83), Performance Evaluation (Architect-Engineer)*. SF 1421 is prescribed for use in evaluating and reporting on the performance of architect-engineer contractors within approved dollar thresholds and as otherwise specified in 36.702(c).

53.237 Reserved.

53.238 Reserved.

53.239 Reserved.

53.240 Reserved.

53.241 Reserved.

53.242 Contract administration.

53.242-1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in connection with novation and change of name agreements, as specified in 42.1203(f).

53.243 Contract modifications (SF 30).

SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in (a) amending solicitations, whether advertised or negotiated, as specified in 14.208, 15.410, and 43.301, (b) modifying purchase and delivery orders, as specified in 13.503(b), and (c) modifying contracts, as specified in 42.1203(f), 43.301, 49.602-5, and elsewhere in this regulation. Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

(b) Item 3 (effective date).

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date of the previous letter determination.

53.244 Reserved.

53.245 Government Property (SF's 120, 120-A, 126, 126-A, 1423, 1424, 1426 through 1434).

The following forms are prescribed, as specified below, for use in reporting, redistribution, and disposal

53.246

of contractor inventory (defined in 45.601) and in accounting for this property:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120-A (GSA), Continuation Sheet (Report of Excess Personal Property)*. (See 45.608-2(b)(2), 45.608-5(d)(1), and 45.608-8.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126-A (GSA), Report of Personal Property for Sale (Continuation Sheet)*. (See 45.610-1(c).)

(c) *SF 1423 (10/83), Inventory Verification Survey*. (See 45.606-3(b).)

(d) *SF 1424 (10/83), Inventory Disposal Report*. (See 45.615.)

(e) *Reserved*.

(f) *SF 1426 (10/83), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (10/83), Inventory Schedule A-Continuation Sheet (Metals in Mill Product Form)*. (See 45.606 and 49.602-2(a).) Pending publication of a new edition of SF 1426, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(g) *SF 1428 (10/83), Inventory Schedule B, and SF 1429 (10/83), Inventory Schedule B-Continuation Sheet*. (See 45.606 and 49.602-2(b).) Pending publication of a new edition of SF 1428, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(h) *SF 1430 (10/83), Inventory Schedule C (Work-in-Process) and SF 1431 (10/83), Inventory Schedule C-Continuation Sheet (Work-in-Process)*. (See 45.606 and 49.602-2(c).) Pending publication of a new edition of SF 1430, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(i) *SF 1432 (10/83), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (10/83), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment)*. (See 45.606 and 49.602-2(d).) Pending publication of a new edition of SF 1432, reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(j) *SF 1434 (10/83), Termination Inventory Schedule E (Short Form For Use With SF 1438 Only)*. (See 45.606 and 49.602-2(e).) Pending publication of a new edition of SF 1434, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

53.246 *Reserved*.

53.247 Transportation (U.S. Government Bill of Lading).

The U.S. Government Bill of Lading, prescribed in 41 CFR 101-41.304, shall be used for transportation of property, as specified in 47.103.

53.248 *Reserved*.

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FEDERAL ACQUISITION REGULATION (FAR)

53.249 Termination of contracts (SF's 1034 and 1435 through 1440).

(a) The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 49.6:

(1) *SF 1034 (GAO), Public Voucher for Purchases and Services Other than Personal*. (See 49.302(a).)

(2) *SF 1435 (10/83), Settlement Proposal (Inventory Basis)*. (See 49.602-1(a).)

(3) *SF 1436 (10/83), Settlement Proposal (Total Cost Basis)*. (See 49.602-1(b).) Pending publication of a new edition of SF 1436, Item 7, Section II, is revised to read "Total Costs (Items 1 thru 6)."

(4) *SF 1437 (10/83), Settlement Proposal for Cost-Reimbursement Type Contracts*. (See 49.602-1(c) and 49.302.)

(5) *SF 1438 (10/83), Settlement Proposal (Short Form)*. (See 49.602-1(d).)

(6) *SF 1439 (10/83), Schedule of Accounting Information*. (See 49.602-3.)

(7) *SF 1440 (10/83), Application for Partial Payment*. (See 49.602-4.)

(b) The inventory schedule forms prescribed in 53.245(f) through (j) shall be used to support termination settlement proposals listed in paragraph (a), above, as specified in 49.602-2.

53.250 *Reserved*.

53.251 Contractor use of Government supply sources (OF 347).

OF 347, Order for Supplies or Services. *OF 347*, prescribed in 53.213(e), may be used by contractors when requisitioning from the VA, as specified in 51.102(e)(3)(ii).

SUBPART 53.3—ILLUSTRATIONS OF FORMS

53.300 Scope of subpart.

This subpart contains illustrations of forms used in acquisitions.

53.301 Standard forms.

This section illustrates the standard forms that are specified by the FAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the standard form numbers (e.g., Standard Form 18 appears as 53.301-18).

53.302 Optional forms.

This section illustrates the optional forms that are specified by the FAR for use in acquisitions. The numbering system is as indicated in 53.301.

53.303 Agency forms.

This section illustrates agency forms that are specified by the FAR for use in acquisitions. The forms are arranged numerically by agency. The numbering system is as indicated in 53.301.